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No.

In the
SUPREME COURT OF THE UNITED STATES

DECEMBER TERM 1993

J. MORRIS ANDERSON,

Petitioner,

vs.

STEERS, SULLIVAN, McNAMAR & ROGERS , AND
RUTH E. MYER, INDIVIDUALLY,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
****

PETITION FOR WRIT OF CERTIORARI

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. Whether plaintiff/appellant, pro se (an out of State Resident) should have been compelled to post a $10,000.00 bond in order to pursue a Civil Action which the District Court deemed sufficiently meritorious to have denied defendants'/appellees' motions for summary judgment on three counts.

2. Whether an appeal taken to the U.S. Court of Appeals by a pro se appellant is frivolous and should have had sanctions imposed solely on the grounds that the appellee is unrepresented.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

****

PETITION FOR WRIT OF CERTIORARI

Petitioner, J. Morris Anderson, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit affirming the Order of the United States District Court for the Southern District of Indiana which compelled petitioner to post a $10,000.00 bond in order to pursue his civil action which the lower Court deemed sufficiently meritorious to have denied three of defendants'/appellees' motions for

summary judgment and all motions to strike.

OPINIONS BELOW

The opinion of the Court Of Appeals is reported as Anderson v. Steers, Sullivan, McNamar & Rogers, and Ruth E. Myer. 998 F 2d 497 (7th Cir. 1993) and appears in Appendix A to this petition. The unpublished written opinion of the District Court for the Southern District of Indiana, imposing a $10,000.00 original cost bond upon petitioner appears in Appendix B. The original mandate of the Court below ordering petitioner to pay only single cost appears in Appendix B(1). The unpublished ruling of the Magistrate, denying respondents' motions for summary judgment, adopted by the District Court for the Southern District of Indiana appears in Appendix C. The Memorandum and Order of the District Court for the Eastern District for the Eastern District of Pennsylvania entering a default judgment against Joyce Christmas for infringement appears in Appendix F. The District Court's Order dismissing cause appears in Appendix O. The Entry and memorandum District Court's Order denying Petitioner's Motion for Reconsideration appears in Appendix P.

JURISDICTION

The Court of Appeals' Opinion in the matter was filed on July 7th, 1993. The Court of Appeals' Mandate awarding single cost and no sanctions was filed on July 29th, 1993. The Court of Appeals' Order awarding double cost and imposing sanctions on petitioner was filed on August 13th, 1993. A timely Petition for Rehearing was filed on August 23rd, 1993. The Court of Appeals' denial of the Petition for Rehearing was issued on September 17, 1993 and is set forth in Appendix C. This Court's jurisdiction is invoked under Title 28, U.S.C. 1254(1)

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

Amendment VIII to the United States Constitution is set forth in Appendix D. Amendment XIV to the United States Constitution is set forth in Appendix E.

STATEMENT OF THE CASE

The United States District Court, Southern District of Indiana had jurisdiction pursuant to 28 USC 1332.

HISTORY

Petitioner filed a five count Complaint against respondents arising out of a controversy wherein Ms. Joyce Christmas, a Friend of respondent Ruth Myer, Esquire, had infringed appellant's Miss Black America Trade Mark by incorporating its following names in Indiana: Miss Black America, Miss Black Indiana, and Miss Black Indianapolis.

Ruth Myer, Esquire, as a favor for her friend, Ms. Joyce Christmas, wrote a letter on her Law Firm's (Steers, Sullivan, McNamar & Rogers) Stationery threatening to bring legal action against petitioner, the Black Expo, the co-producer of the Miss Black America Pageant in Indianapolis, Indiana, and other business associates of petitioner providing he used his trademarked Name, Miss Black America, in the State of Indiana. (SEE LETTER ATTACHED TO THE APPENDIX AS APPENDIX G)

Ruth Myer, Esq. did not mail the letter to petitioner. On the contrary, she gave the original letter to the infringer, Ms. Christmas, whereupon, Ms. Christmas, armed with the letter, served it upon Rev. Charles Williams, President of the Black Expo. During a church service at the First

Christian Baptist Church for the Miss Black America Contestants, Ms. Christmas had the letter served upon Rev. Damon Roach. Anderson was negotiating a contract with Rev. Roach. The fiasco caused Rev. Roach to cut off negotiations. The letter was hand delivered to local television stations and newspapers and used as a basis to interrupt petitioner's pageant proceedings, harass and threaten legal action against petitioner and his business associates. All this, in an attempt to shake petitioner down if he and his associates participated in petitioner's production of the 1989 Miss Black America Pageant in Indianapolis Indiana. Respondent, Ruth Myer, affied that she wrote the letter as a courtesy and at no charge. (SEE AFFIDAVIT OF RUTH MYER ATTACHED TO THE APPENDIX AS APPENDIX "H(1)."

JUDGMENT ISSUED AGAINST SERVICE MARK INFRINGER

As a means of continuing his production of the Miss Black America Pageant which petitioner had been producing for over two decades, petitioner filed an action in the United States District Court

for the Eastern District of Pennsylvania against the infringer Joyce Christmas whereupon that Court issued a judgment against Joyce Christmas for the infringement. In addition, petitioner filed an action against respondents; however, that Court dismissed petitioner's Complaint against respondents for lack of personal jurisdiction over them which prompted petitioner to file his cause against them in the District Court for the Southern District of Indiana.

MOTIONS FOR SUMMARY JUDGMENT

On August 20, 1990, pursuant to petitioner having filed his Complaint in the District Court for the Southern District of Indiana, respondents filed several motions for summary judgment seeking to dismiss and/ or strike all five counts of the Complaint; these, in addition to a motion to compel petitioner to post an original cost bond of $10,000.00

THE DISTRICT COURT'S DENIAL OF RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT

On December 10, 1990, the District Court denied respondents' motions to dismiss Count two,

(interference with business and contractual relationships regarding the Black Expo) Count Three, (interference with business and contractual relationships regarding Rev. Charles Williams, and Count Four of the Complaint (Negligence by defendants in their dealings with petitioner).

REASONS FOR GRANTING THE WRIT

The primary reasons Certiorari should be granted are twofold: (1) This Petition presents an issue which has not been specifically and unequivocally decided by this Court; and (2) the Opinion below conflicts with previous decisions of other Circuits.

CONFLICT WITH OTHER CIRCUITS

For example, the Opinion Below conflicts with the Second Circuit which ruled in Cf. Farmer v. Arabian Oil Co., 285 F2d 720 (2d Cir. 1960) that a bond of $6,000.00 was unwarranted where plaintiff had made a strong prima facie case. Certainly, as concurred by the District Court, petitioner, in the case at bar, made a strong prima facie case.

Clearly, the opinion below conflicts with that

of the Fifth Circuit Court of Appeals in Ehm v. Amtrak wherein the Seventh Circuit's distinguished panel cited Ehm v. Amtrak Board of Directors, 780 F 2d 516 (5th Cir. 1986)(per curiam) as a precedent to affirm the District Court's ruling to impose a $10,000.00 cost bond on appellant/petitioner. In Ehm the District Court, feeling that Ehm's cause lacked merit, required appellant/plaintiff who was pro se to post a $500.00 cost bond as a specific result of appellant Ehm having previously filed three law suits against the same defendant wherein he did not prevail and wherein the total cost assessed against him for the previous actions had totaled $889.00 which he had refused to pay and he was attempting to file a fourth action which the District Court deemed meritless and consequently assessed a $500.00. cost bond.

NO SANCTIONS WERE IMPOSED ON EHM FOR APPEALING TO THE 5TH CIRCUIT DESPITE THE APPARENTLY FRIVOLOUS NATURE OF HIS APPEAL

In Ehm v. Amtrak Board of Directors, 780 F 2d 516 (5th Cir. 1986)(per curiam); The Fifth Circuit Court of Appeals ruled that (this being a novel issue) sanctions would not be imposed against

appellant for bringing a frivolous appeal. This ruling, since this controversy was stated as:

"A novel one for the 5th Circuit."

Unlike the case at bar wherein the Seventh Circuit of Appeals affirmed the District Court's imposition of an unprecedented, extraordinarily burdensome bond of $10,000.00 on petitioner, it went on further (despite, stating, "This being a novel issue") to punish appellant/petitioner for having

even appealed to the Appellate Court (it remanded its original mandate which only imposed single costs) by imposing sanctions of $2,579.95 in addition to double costs of $533.00 on appellant. This, for him having simply taken an appeal, pro se. This, despite the fact that the District Court had never ruled nor implied that appellant's cause was frivolous. The only point defendants had made to the District Court were that plaintiff was a non resident and owned no property in the jurisdiction. However, the District Court ignored the fact that plaintiff/petitioner was not a foreigner per se to

the State and City of Indianapolis, Indiana since he primarily did business in the city of Indianapolis, Indiana where he produced the nationally Televised Miss Black America Pageant.

Undoubtedly, one specific conflict in the case at bar and Ehm v. Amtrak, is that the Fifth Circuit imposed no sanctions on appellant, Ehm, despite the fact that he had repeatedly failed to pay costs levied against him in three (3) suits filed against the same defendant. In addition, appellant Ehm, who had been guilty of filing several suits against the

same defendants as a means of harassment, had only a $500.00 cost bond imposed upon him. In Ehm, a striking difference between the action of the Fifth Circuit and the case at bar was that the bond imposed by the District Court was not unreasonable. A mere $500.00 whereas the bond in the case at bar was an outrageous $10,000.00 - clearly unreasonable and burdensome and fatal to petitioner's cause of action.

In its opinion in Ehm, the Fifth Circuit used **Aggarwal v. Ponce School of Medicine, 745 F.2d**

723, 727-28 (1st Cir.1984) as controlling. The Aggarwal factors include, " the probability of plaintiff's success on the merits, the background and purpose of the suit, and the reasonableness of the amount of the posted security viewed from the perspective of plaintiff and defendant. With these factors in mind, the Fifth Circuit affirmed the $500. but imposed no sanctions.

However, on the contrary the Court below neither used the factors which governed Ehm, nor Aggarwal, it ignored the probability of plaintiff's success on the merits which probability had been clearly established by the District Court's ruling

that three of plaintiff's counts had merit; it ignored the meritorious background and purpose of the suit - in that there had been a judgment against one of the original defendants in the District Court for the Eastern district of Pennsylvania wherein Joyce Christmas had been adjudicated guilty of infringement; the Court below ignored the factor of the reasonableness of the

amount of the posted security viewed from the perspective of plaintiff and defendant by affirming the imposition of an unreasonable $10,000.00 cost bond; and, clearly, the matter of sanctions on the appellate level conflicted with Ehm as a result of the Court Below's imposition of $3,112.95 in sanctions upon petitioner.

Conclusively, if petitioner's original cause had merit, then it follows that his appeal had merit.

In the opinion below, the Panel cited **A & M Gregos, Inc. v. Robertory;, 70 F.R.D. 321 (E.D. Pa 1976)**

In this action the Eastern District of Pennsylvania required plaintiff/appellee to post a cost bond,

> "Since the history of the case left only one possible conclusion, viz. that there was a good chance that defendants would ultimately succeed in proving bad faith."

This action was taken specifically because the Court felt appellant had pursued a claim or defense in bad faith, vexatiously or oppressively.

Plaintiff was "unable to produce any factual support whatever for its claims."

Absolutely, there is a gigantic conflict among the Circuits regarding the imposition of a cost bond and sanctions on a pro se litigant. With regard to the case at bar and A & M Gregos, Inc. v. Robertory, 70 F.R.D. 321 (E.D. Pa 1976), the exact opposite of circumstances exists. The District Court in the case at bar never felt appellant had pursued a claim or defense in bad faith, vexatiously or oppressively.

On the contrary, the District Court specifically denied defendants'/respondents' motions for Summary Judgment by agreeing with petitioner's allegation that defendants/respondents were negligent in their positions as officers of the Court when they published a threatening letter on their letterhead to petitioner but failed to deliver it to him. Instead, they provided it to a reckless trademark infringer who used it detrimentally against plaintiff/petitioner. In addition, the District Court ruled that petitioner had two causes for interference with contractual

relations against respondents.

State Wide Enterprises, Inc. v. United States Gypsum Co., 238 F. Supp. 604 (E.D. Mich. 1965) was cited in the Opinion below as one in support of the Court's decision to affirm the $10,000.00 cost bond.

State Wide does not, in fact, support the Opinion Below. Again, the opinion of the Seventh Circuit below clearly creates a conflict among the Circuits regarding the imposition of a cost bond and sanctions on a pro se litigant. In **State Wide Enterprises, Inc. v. United States Gypsum Co., 238 F. Supp. 604 (E.D. Mich. 1965)** the ruling was solely based on the District Court's Opinion that plaintiff's case lacked merit. State Wide's facts were contradictory to the District Court's decision in the case at bar to impose the $10,000.00 ;and, Statewide's facts were conflicting with those in the Opinion Below to further impose sanctions on petitioner for filing his appeal, pro se.

Unconditionally, in the instance of State Wide Enterprises v. U.S. Gypsum, the Court's reasoning was that the suit was of dubious

merit, and plaintiff lacked financial responsibility the total days of trial were anticipated at 28 days and the issues involved were of a complicated nature.

The maximum amount of days the case at bar could have taken was two days. The issues had been narrowed by the summary judgment process.

The motive of the Court in State Wide Enterprises was to protect the prevailing party from having to bear the cost of defending against utterly meritless contentions.

LENGTH AND COMPLEXITY OF CASE HAD BEEN REDUCED TO A MINIMUM BY USE OF THE SUMMARY JUDGMENT PROCESS

On the contrary, in the case at bar, the District Court confirmed that three of petitioner's contentions had merit. Three Counts survived the summary judgment process. The issues were not complicated and the probable length and complexity of the case had been absolutely reduced to a maximum of two days by Summary Judgment.

Hence, the controversy had been reduced to a simple question of whether defendants were liable

for their negligence in causing damages to plaintiff by providing a reckless trademark infringer a threatening letter on the law firm's stationery which was used detrimentally against plaintiff/petitioner and had caused damage to his contractual relationships.

The trademark infringer had already been adjudicated guilty in the U.S. District Court for the Eastern District of Pennsylvania. Hence, that issue was settled.

Without a doubt, a conflict among the circuits exists when imposing cost bonds upon pro se and out of State litigants which should prompt this Court to make a just decision that a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter.

AS TO THE QUESTION OF WHETHER AN APPEAL TAKEN TO THE U.S. COURT OF APPEALS BY A PRO SE APPELLANT IS FRIVOLOUS ON THE SOLE GROUNDS THAT THE APPELLEE IS UNREPRESENTED.

Bacon v. American Federation of State, County

& Municipal Employees Council, 795 F.2d 33 (7th Cir. 1986) was cited in the Opinion Below as support for the imposition of sanctions on respondent. In this instance, the opinion of the Seventh Circuit below clearly creates a conflict within itself regarding the imposition of a cost bond and sanctions on a pro se litigant.

Bacon, a pro se plaintiff/appellant was ordered to pay defendants'/appellees' attorney fees as a result of the Court's belief that "his cause was indeed hopeless."

Sanctions of attorney's fees but no double cost were imposed as a means of protecting the prevailing party from having to bear the cost of defending against utterly meritless contentions.

The Court's position in this issue was,

> "When a layman persists in a hopeless cause long after it should have been clear to him as a reasonable (though not law-trained) person, that his cause was indeed hopeless, sanctions should be imposed, as this and other Courts have frequently done in "tax protester" and other frivolous pro se suits."

In the case at bar, the District Court never opined that the cause of appellant/respondent "was

indeed hopeless." On the contrary, the District Court ruled that plaintiff's cause had merit and thereby refused to dismiss his cause on defendants'/respondents' motions for summary judgments.

In Bacon v. American Federation of State, County & Municipal Employees Council, 795 F.2d 33 (7th Cir. 1986), even the Seventh Circuit was divided on the issue of sanctions, in dissenting from the Seventh Circuit's ruling to levy Attorney's Fees on Bacon, Judge Ripple dissented and stated,

> "I respectfully dissent from the award of attorney's fees to the defendant."

In Bacon v. American Federation of State, County & Municipal Employees Council, 795 F.2d 33 (7th Cir. 1986), Cont.

> "In dealing with a pro se litigant, the line between bad faith and mere ineptitude is often difficult to ascertain. Here, I am unable to conclude with certainty that this case presents the sort of frivolous, vexatious appeal which would warrant the imposition of attorney's fees."

In the case at bar, plaintiff/appellant/ petitioner was ordered to pay double the cost which appellees had spent and was ordered to pay

sanctions of $2,579.95 as punishment for having appealed the District Court's order for him to post a $10,000.00 bond. How can the appeal of an Order to post such a bond be Frivolous when the cause was adjudicated by the District Court as not frivolous?

Causing a plaintiff pro se to pay costs when he does not prevail is one thing, but to punish the plaintiff pro se with sanctions for filing an appeal is another. This punishment, despite the fact that the District Court never gave the slightest indication that the case was frivolous and void of merit.

In the opinion below, the panel cited **McNeil v. United States, 61 U.S.L.W. 4468, 4470 (U.S. May 17, 1993).**

Again, the opinion of the Seventh Circuit Below is not supported by its own previous rulings, thereby creating a conflict even within itself regarding the imposition of sanctions on a pro se litigant. The facts of McNeil are absolutely contrary to the case at bar.

Pleading pro se, McNeil made a fatal mistake

by filing a Complaint in Federal District Court prior to exhausting all administrative remedies of the U. S. Public Health Services.

In the case at bar, plaintiff/petitioner, pro se did not make any fatal mistakes period. Absolutely, there was no justifiable cause for a $10,000.00 cost bond and subsequent dismissal of his action for not having paid the bond and an award of attorneys' fees and double cost for having appealed the issue. Nothing in Petitioner's Cause appeared to have it labeled as frivolous to the extent he should have been punished to the tune of #3,112.95. The issue in McNeil is different from the issue at bar. They are horses of two different colors. Clearly, there is a conflict in the two rulings.

This Court should grant certiorari here to explicitly rule against excessive and lethal cost bonds and punitive sanctions being imposed upon pro se litigants who are not guilty of filing frivolous causes or filing frivolous appeals. This

Court should make it clear that Cost Bonds and Sanctions should not be applied as a means to dismiss legitimate causes of action of pro se litigants who have been damaged and seek to enforce the 14th Amendment's constitutional rights of equal protection of the law and their rights of due Process.

A R G U M E N T

Appellant should not have had sanctions imposed upon him because the appeal was not frivolous. Nothing in petitioner's cause illustrates the filing of the Complaint or the appeal to harass, delay or embarrass defendants/respondents. It is emphasized that the fact that the District Court had clearly ruled that petitioner's claim had merit when it denied three of respondents' motions for summary judgment mitigated his cause or his appeal being deemed frivolous. Without a doubt, the "frivolous" requirement has not been met in petitioner's cause.

Clearly the sanction is a cruel and unusual punishment levied on petitioner for appearing pro se which violates the spirit of the, "cruel and

unusual punishment clause of the 8th Amendment to the Constitution. (SEE APPENDIX "I")

Had the District Court ruled petitioner's cause had no merit or that petitioner's cause was indeed hopeless, petitioner would have abandoned the cause and not appealed. Petitioner was not a foreigner per se to the State of Indiana since he did a large portion of his business in Indiana. Petitioner had not been accused of lacking financial responsibility by defendants nor the District Court. Viewed from the perspective of plaintiff and defendant, no consideration was given in favor of plaintiff.

Clearly, the District Court is provided a means for dispensing with frivolous law suits filed by pro se litigants other than by imposing a bond which is fatal to the cause of action. Clearly, the granting of a motion for summary judgment will keep a frivolous appeal away from the Appellate Courts. The Summary Judgment procedure was not utilized to dismiss petitioner's action because his cause was not frivolous.

The imposition of the bond and the sanctions

were unreasonable. The $10,000.00 bond was unprecedented and contrary to F.R.C.P., 1. It is absolutely clear that the $10,000.00 bond did not serve to secure the just,, speedy and inexpensive determination of petitioner's action.

It is axiomatic that the imposition of the excessive $10,000.00 Bond on petitioner served to preclude his constitutional right to sue. This, whether the bond imposed by the District Court or the Sanctions imposed by the Appellate Court were intended to curtail his constitutional rights or not, they served as a specific vehicle which did, in fact, thwart the just, speedy and inexpensive determination of petitioner's action. Clearly this action is contradictory to F.R.C.P. 1

(SEE F.R.C.P. 1 ATTACHED TO THE APPENDIX AS APPENDIX "K")

The Opinion Below is defective, not because the District Court does not clearly have the absolute discretionary right by statute and by the Federal rules of Civil Procedure to impose a cost bond on petitioner and not because the Appellate Court does not clearly have the right to use its

discretion to impose sanctions upon petitioner, but because the application of those rights were not liberally construed, they both abused their discretion. The bond and the sanctions were construed in the most favorable light of the defendants. No doubt, the bond is excessive and it specifically precluded petitioner's right to sue without excessive bond requirements and the sanctions did impose an unusual and cruel punishment in violation of the Eighth Amendment to the United States Constitution.

The damages petitioner suffered, supra, as a result of respondents' negligent actions prompted him to commence the action in the U.S. District Court for the Eastern District of Pennsylvania as a means of surviving in his life's work. (The Production of the Miss Black America Pageant). There was nothing frivolous about the action. All the effort and expense petitioner put into the prosecution of his cause provides living proof that he didn't file his action in bad faith, vexatiously or oppressively. Petitioner spent all his available funds commencing the prosecution of this action.

PETITIONER COULD NOT AFFORD THE COST OF A LAWYER

Petitioner was unable to acquire a lawyer to represent him because of the cost involved. Petitioner was required to expend vast sums to travel to Indianapolis, Indiana to prosecute respondents in the District Court which had personal jurisdiction over them. Petitioner was left with no alternative but to represent himself in this action.

PETITIONER USED EVERY MEANS AVAILABLE TO HIM TO SHOW THAT HE COULD NOT POST THE BOND

In the Opinion Below, the Court stated "Petitioner had made no effort to show that he could not post the bond."

Opposite to what was stated in the Opinion below, petitioner, indeed, had stated from the outset the bond was burdensome. In the initial response of petitioner to respondent's motion requesting a bond, petitioner asserted the financial hardship of the bond upon him in his memorandum of law: (SEE PLAINTIFF'S RESPONSE TO MOTION FOR BOND ATTACHED TO THE APPENDIX AS APPENDIX "M")

> "Were this Honorable Judicial Body to grant defendants' motion and impose a

> financial burden upon plaintiff in the form of a bond, it would in fact, cause plaintiff to endure double financial woes - all at the hands of defendants. Plaintiff is already suffering anguish, heartache and misery and pain as a result of defendants' malicious attacks upon him."
>
> "Defendants are moving this Court to impose a monstrous, and unusual financial burden upon plaintiff as a specific means of making it difficult for plaintiff to prosecute them for the tortious, civil wrongs they committed against him as follows:"

Counter to what was stated in the Opinions Below, in Plain English, when plaintiff opposed the motion of defendants to impose a $10,000.00 bond, plaintiff stated that the imposition of the bond would prevent him from prosecuting his cause of action.

(SEE PLAINTIFF'S RESPONSE TO MOTION FOR BOND ATTACHED TO THE APPENDIX AS APPENDIX "M")

> As a specific result of the civil wrongs perpetrated against plaintiff, by defendants, he has lost money to the point where he can not afford to post a bond as a means of prosecuting defendants. It is the fault of defendants that plaintiff is without funds. The specific purpose behind defendants moving this Court to impose a bond upon plaintiff is to place a financial deterrent in front of plaintiff to thwart his efforts in prosecuting them for their tortious civil wrongs against him.

Contrary to what was stated in the Opinion Below, petitioner stated and re-stated the burden of the bond from the time the motion was filed by respondents in the District Court. Petitioner went on to state fatal aspect of the bond in each and every pleading related to the cost bond. This, all the way up until he filed a petition for a rehearing to the Seventh Circuit Court of Appeals.

(SEE PLAINTIFF'S MOTION TO RECONSIDER THE IMPOSITION OF THE BOND ATTACHED TO THE APPENDIX AS APPENDIX "N")

In petitioner's objection and motion to reconsider the District Court's ruling of July 16, 1992 wherein the bond was imposed, petitioner declared the following in his legal argument:

> "The bond totaling $10,000.00 imposes a monstrous financial burden upon plaintiff. plaintiff has already suffered enough because of the damages he experienced as a result of defendants' negligence as cited in the Complaint."

Contrary to what was stated in the Opinion Below, Petitioner did state in his motion to reconsider the bond that the $10,000.00 bond was an unreasonable estimate of the costs likely in a

lawsuit of this character as follows: (SEE PLAINTIFF'S MOTION TO RECONSIDER THE IMPOSITION OF THE BOND ATTACHED TO THE APPENDIX AS APPENDIX "N")

> Defendants cite their expenditure of approximately $1,100.00 to defend against plaintiff's Complaint which was originally filed in the Eastern District of Pennsylvania. Certainly there is nothing defendants have alleged to justify compelling plaintiff to post a $10,000.00 bond, which is extremely excessive. Therefore, the amount of the bond should be reduced within reason and a plausible amount of time alloted in which to post said bond.

In petitioner's Appellant Brief to the Seventh Circuit Court,

(SEE APPELLANT'S BRIEF ATTACHED TO THE APPENDIX AS APPENDIX "Q")

petitioner absolutely exerted a yeoman's effort, "to show that he could not afford to post the bond." Petitioner stated with crystal clarity that he could not afford the bond as follows:

> "By virtue of the Lower Court having granted appellees' motion to impose a burdensome $10,000.00 bond upon appellant, it in fact, punished appellant and forced him out of Court - this, because the financial burden was more than he could endure. Clearly, the imposition of the $10,000.00 bond served as a means of punishing appellant for bringing appellees into Court to answer to alleged Civil Wrongs

> perpetrated against him in the first place. The $10,000.00 bond sent a clear, farewell message to plaintiff as follows: "Regardless of how much you've been wronged by a defendant who resides in a different State, don't file suit against him unless you're prepared to post a $10,000.00 Bond."
>
> Clearly, this cause was commenced after Joyce Christmas incorporated his Miss Black America Service Mark and used the letter which was negligently supplied by respondents to threaten him, harass him and attempt to shake him down. Petitioner had no alternative but to prosecute the wrongdoers. However, he is the one who has been prosecuted and punished for initiating a legitimate cause of action.

This Court should take this opportunity to clarify this controversy and provide just guidelines to all the Circuits regarding the imposition of Cost Bonds and Sanctions upon pro se litigants. This Court should take this opportunity to provide guidelines as to what is or is not a frivolous cause of action.

Petitioner is not involved with any groups out there who set out to waste the Court's time, such as tax protestors, or those who have problems with the legal system. Petitioner has no problem with using lawyer to represent him. The fact is, he

could not afford representation. Hence, he should not be punished for not being able to afford representation. He should not be punished for exercising his constitutional right to represent himself.

This Court should grant certiorari here to explicitly rule that cost bonds and sanctions should only be applied to pro se litigants and represented litigants who abuse the judiciary system by filing meritless, frivolous causes.

This Court should grant certiorari here to create a means by which to eliminate the possibility that excessive bonds and sanctions will be imposed on pro se litigants solely because the litigants are unrepresented.

The position of the District Court should have been to implement the expressed Federal Policy of securing the inexpensive determination of every action as espoused by F.R.C.P., 1. Prior to imposing the fatal $10,000.00 bond, the District Court should have taken into consideration that the

following tests weighed heavily in petitioner's favor: (1) likelihood of his success on the merits; (2) probable length and complexity of the case; (3) whether petitioner had pursued his claim in bad faith, vexatiously or oppressively; and finally, (4) the rule should have been interpreted liberally in favor of petitioner, so as not to preclude his right to sue through excessive bond requirements.

The only means petitioner had to seek a redress of his grievances against respondents was by filing suit in the Southern District of Indiana. This was as a result of petitioner's action against respondents having been dismissed in the Eastern District of Pennsylvania for lack of that Court's personal jurisdiction over them. Clearly the $10,000.00 bond absolutely did not provide a just and inexpensive determination of petitioner's cause of action.

Without a doubt, this High Principled Court of last resort should clarify the law and in the name of justice provide a means by which a foreign litigant can gain access to the Courts and inexpensively file a non-frivolous law suit.

DENIAL OF EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

Coady v. Aquadillia Terminal, Inc., 456 F2nd at 677

> "To require all foreign plaintiffs, as such, to post substantial security as a condition to access to the courts may well be an unconstitutional denial of equal protection."
> (SEE 14TH AMENDMENT ATTACHED TO APPENDIX AS APPENDIX "J")

In the Opinion Below, the Seventh Circuit stated two reasons petitioner should have been required to post a $10,000.00 bond: (i) frivolous character of the litigation; and, (ii) the fact that petitioner was unrepresented, Anderson v. Steers, Sullivan, McNamar & Rogers, and Ruth E. Myer. 998 F 2d 497 (7th Cir. 1993)

> "The apparently frivolous character of this litigation and the fact that the plaintiff is an unrepresented individual made the defendants' motion for posting of such a bond a plausible one."

The Statement, supra, as to "frivolous character," is clearly contradicted by the statement which was made by Magistrate, J. Patrick Endsley for the District Court when it denied three of respondents' Motions for Summary

Judgment; On December 6, 1990 at 4, 5, and 6.

(SEE DISTRICT COURT'S DENIAL OF 3 OF RESPONDENT'S MOTIONS FOR SUMMARY JUDGMENT ATTACHED TO APPENDIX AS APPENDIX "E(3) & E(4)

Counts II and III

"Plaintiff's second and third counts allege tortious interference with a business relationship between the plaintiff and the Indianapolis Black Expo. The elements of this tort are: 1) the existence of a valid business relationship; 2) the defendants' knowledge of the relationship; 3) the defendants' intentional inducement of breach of contract; 4) the absence of justification; and 5) damages resulting from the defendants' action. Near East Side Community Organization v. Hair, 555 N.E.2d (Ind. St. App. 1990) Johnson v Hickman, 507 N.E.2d 1014 (Ind. Ct. App. 1987). While the defendants claim the plaintiff has failed to allege the defendants' knowledge of any business relationship, the Court notes that plaintiff has alleged such a relationship. Paragraph 39 of the Complaint states in part, "Defendants had proof positive that plaintiff and his Miss Black America Pageant had entered into a contractual relationship to become a part of the Indiana Black Expo. . ." The Court finds this to be a sufficient allegation of defendants' knowledge."

"The defendants also claim that plaintiff has failed to allege that the defendants lacked justification to act as they did. While it is true that Anderson makes no such specific allegation, the fact that he attributes to defendants the specific goal

of ruining his contractual relationship (Complaint p. 16) indicates to the Court that Anderson believes the defendants acted wholly without justification. Holding the plaintiff to a pro se standard of pleading (which the Court will discuss further below), the Court finds that the plaintiff has made sufficient allegations to sustain a claim for interference with a business relationship."

"Whether the defendants had knowledge of any contractual relationship between Anderson and the Black Expo, and whether the defendants' acted with justification are trial issues, as is the issue of damages. The allegations are sufficient, however, for the claims to survive dismissal at this stage. Therefore, defendants motion to dismiss is denied with respect to Counts II and III."

Count IV

"Count IV of plaintiff's complaint alleges that defendants acted negligently in their dealings with him. While it seems difficult to see how an Indianapolis Attorney and her lawfirm (sic) could have a duty to a Philadelphia promoter, the fact is that the defendant Ms. Myer drafted a letter threatening plaintiff with legal action. The letter, instead of being sent to the addressees, was distributed in Indianapolis to people interested in the Black Expo. It is obvious that a

letter accusing an individual of unlawful conduct could damage contractual relationships."

"The duty of defendants was to refrain from damaging his business in

> their representation of Ms. Myer's friend. To threaten suit is sometimes the duty of an attorney. To do so privately (i.e. by sending the letter to the threatened party) is part of an attorney's responsibility. If Joyce Christmas caused the letter to become public and damage the plaintiff, the fact that she was in possession of the letter was due to Attorney Myer's failure to send it to plaintiff. Whether the defendants breached their duty to plaintiff is a trial issue, but plaintiff alleged a duty, a breach of that duty, and that he suffered damages. Thus, the defendants' motion to dismiss is denied s it pertains to Count 4 of the Complaint."

The District Court made it crystal clear, supra, that it did not believe petitioner's cause was frivolous. Hence, the "frivolous" requirement, as stated in the Opinion Below, was not met in the case at bar.

The Supreme Court has never ruled that an expensive and fatal bond should be imposed on a litigant solely because he or she appears pro se. This presents a conflict between this Court and any Circuit which imposes a fatal bond on a litigant because he is foreign to the jurisdiction and appearing pro se.

A MATTER OF EQUITY

In the Opinion Below, the Seventh Circuit states:

> "It may seem obvious that it (the appeal) is not frivolous".
>
> "Frivolousness is determined, however, not in the abstract but in relation to the arguments actually made by the appellant. *In re Hendrix*, 986 F. 2d 195, 200-01 (7th Cir. 1993)

Petitioner believes he pled his case well. Even if petitioner did not make the most eloquent pleading of his case, the record of the pleadings in general and the law of equity and justice made a case for him that his cause was not frivolous. Since neither the District Court nor the Court Below has pointed out the violation of any procedural rule which would deem his cause frivolous, petitioner undoubtedly deserved not to be prevented from securing the just, speedy and inexpensive determination of his action in accord with the requisites of F.R.C.P., 1.

It is without doubt that petitioner made a case in his appeal with plenty of teeth in his appellate brief as follows:

> "The $10,000.00 Plaintiff's Bond imposed a monstrous and unusual financial burden upon appellant which made it difficult if not impossible for him to prosecute appellees for the tortious civil wrongs they committed against him."

In the Opinion Below, the Court stated,

> "The Supreme Court has "never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." McNeil v. United States, 61 U.S.L.W. 4468, 4470 (U.S. May 17, 1993).

It is admitted that petitioner appeared pro se. However, that is the only thing in common petitioner has with McNeil. What mistakes did petitioner make? The fact that petitioner proceeded pro se didn't cause him to make any fatal mistakes. The only way petitioner could afford to appear was without counsel. Providing the District Court or the Appellate Court had pointed out flaws or had specifically pointed that petitioner made mistakes which deemed his cause frivolous, he should not complain about the sanctions or the bond. However, being unable to afford counsel in a civil action should not automatically cause an action to be deemed frivolous.

In **Coady v. Aquadillia Terminal, Inc.**, 456 F2nd at 679, (emphasis added) the Court offered positive direction to the issue at bar whose position this Court is urged to take.

> "Therefore, we emphasize that the District Court is under an obligation to evaluate each case individually, and to exercise its inherent discretion to apply the requirements of Rule 5 so as to facilitate a just and speedy disposition on the merits, as required by Fed R. Civ. P.1.

Therefore, this would be the perfect opportunity for this Court to issue a mandate which would provide a means for all Circuit Courts to evaluate each case individually and facilitate a just and speedy disposition on the merits, as required by Fed. R. Civ. P.1.... This, even if the litigant is **pro se** and foreign to the jurisdiction.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter.

J. Morris Anderson
Petitioner, pro se
P. O. Box 25668
Phila. PA 19144
(215) 844-8872

****
VERIFICATION
****

J. MORRIS ANDERSON hereby states he is the petitioner in the foregoing Petition for writ of certiorari and he is authorized to take this verification, verifying that the statements therein are true and correct to the best of his knowledge, information and belief. The undersigned understands the statements therein are made subject to the penalties of 18 Pa. cc.C, section 4904 relating to unsworn falsifications to authorities and declares under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

_____
J. Morris Anderson
Dated: December 14, 1993

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

In the United States Court of Appeals
For the Seventh Circuit

No. 92-3743
J. MORRIS ANDERSON,

Plaintiff-Appellant,

v.

STEERS, SULLIVAN, McNAMAR & ROGERS
and RUTH E. MYER,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Indiana,
Indianapolis Division
No. 90 C 1531 - **John Daniel Tinder**, *Judge*

SUBMITTED JUNE 8, 1993 - DECIDED JULY 7, 1993

Before POSNER, FLAUM, and EASTERBROOK, *Circuit Judges*.

POSNER, *Circuit Judge*. The plaintiff, the producer of the "Miss Black America Pageant and Television Special," brought this suit against a lawyer and her firm, charging trademark infringement and other forms of unfair competition. The plaintiff is unrepresented, and the basis of his claim is obscure. The defendants asked the

district court to require the plaintiff to post a $10,000 bond to secure the costs of the suit should they be eventually taxed against the plaintiff. The court did so, and, when the plaintiff refused to post the bond on the ground that it was excessive and unnecessary, dismissed the suit, precipitating this appeal.

No statute or rule, or decision of this circuit, expressly authorizes a court to require the posting of a bond to secure the payment of costs to a party should he prevail in the case. Nonetheless it seems to us, as it has seemed to the other courts that have addressed the question, that the power to tax costs implies the ancillary power to take reasonable measures to ensure that the costs will be paid. *Ehm v. Amtrak Board of Directors*, 780 F.2d 516 (5th Cir. 1986)(per curiam); *Hawes v. Club Ecuestre El Comandante*, 535 F.2d. 140, 143 (1st Cir. 1976); *A. & M. Gregos, Inc. v. Robertory*, 70 F.R.D. 321 (E.D. Pa. 1976); *State Wide Enterprises, Inc. v. United States Gypsum Co.*, 238 F. Supp. 604 (E.D. Mich. 1965). So if there is a

reason to believe that the prevailing party will find it difficult to collect its costs, the court can require the posting of a suitable bond. The apparently frivolous character of this litigation and the fact that the plaintiff is an unrepresented individual made the defendants' motion for the posting of such a bond at least a plausible one; and the plaintiff failed to establish to the reasonable satisfaction of the district court either that he has the wherewithal to pay costs should he lose on the merits and that in fact he would pay, or that $10,000 is an unreasonable estimate of the costs likely in a lawsuit of this character.

We therefore affirm. The defendants have requested an award of sanctions under Fed. R. App. P. 38 on the ground that the appeal is frivolous. It may seem obvious that it is not frivolous; the question on appeal is a novel one in this circuit, and although we think the answer clear, we cannot say that it is entirely open and shut. Frivolousness is determined, however, not in the

abstract but in relation to the arguments actually made by the appellant. *In re Hendrix*, 986 F.2d 195, 200-01 (7th Cir. 1993). The appellant's argument is that the district court "teamed up" with the defendants to deny him his day in court. He has made no effort to show that he could not post bond, that a case of this sort is unlikely to produce taxable costs of $10,000 or more, or that federal courts lack inherent authority to require bonds to secure a contingent claim for costs. He is, it is true, unrepresented, but a litigant does not acquire an entitlement to file a frivolous appeal by dispensing with counsel, *Bacon v. American Federation of State, County & Municipal Employees Council*, 795 F.2d 33 (7th Cir. 1986), especially when he does not claim to be unable to afford counsel. The Supreme Court has "never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." *McNeil v. United States*, 61 U.S.L.W. 4468, 4470 (U.S. May 17, 1993).

The issue of sanctions having been fully briefed(see 7th Cir. R. 38), the defendants are directed to submit tc the Clerk of this court within ten days of their documented estimate of the expense they incurred in defending against this appeal.

AFFIRMED, WITH SANCTIONS.

A true Copy:
Teste:

Clerk of the United States Court of
Appeals for the Seventh Circuit

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

August 13, 1993

Hon. RICHARD A. POSNER, Circuit Judge

Hon. JOEL M. FLAUM, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

J. MORRIS ANDERSON,
Plaintiff/Appellant,

No. 92 -3743

v.

STEERS, SULLIVAN, McNAMAR & RODGERS
and RUTH E. MYER,
Defendants/Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. IP 90-1531-C

John D. Tinder, Judge

ORDER

After considering Anderson's Response of July 27, 1993, this court awards the defendants $2,579.95 to cover the expense of this appeal and GRANTS their motion for double costs in the amount of $533.00. This court's earlier order awarding single costs is VACATED.

Anderson should tender a check for $3112.95 directly to the defendants' attorney.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

NOTICE OF ISSUANCE OF MANDATE

DATE: July 29, 1993

TO: John A. O'Neal
United States District Court
Southern District of Indiana
Room 105
Indianapolis Division
46 E. Ohio Street
Indianapolis, IN 46204

FROM: Thomas F. Stubbs, Clerk

RE: 92-3743
Anderson, J. Morris v. Steers, Sullivan
90 C 1531, John D. Tinder, Judge

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

[ ] No record filed
[x] Original record on appeal consisting of:

ENCLOSED:	**TO BE RETURNED AT LATER DATE:**
[ ] Volumes of pleadings	[1]
[ ] Loose pleadings	[1]
[ ] Volumes of transcripts	[ ]
[ ] Volumes of exhibits	[ ]
[ ] Volumes of depositions	[ ]
[ ] In Camera material	[ ]
[ ] Other_____	[ ]
Record being retained for use in Appeal No._____	[ ]

Copies of this notice sent to: Counsel of record
[ ] United States Marshal
[ ] United States Probation Office

NOTE TO COUNSEL:

If any physical and large documentary exhibits have been filed in the above-entitled cause, they are to be withdrawn ten days from the date of this notice. Exhibits not withdrawn during this period will be disposed of.

Please acknowledge receipt of these documents on the enclosed copy of this notice.

Received above mandate and record, if any, from the Clerk, U.S. Court of Appeals for the Seventh Circuit.

Date:_____

1071-010891 Deputy Clerk, U.S. District Court

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

BILL OF COSTS

Date: July 29, 1993

Taxed in favor of: STEERS, SULLIVAN, McNAMAR & ROGERS and RUTH E. MYER, Defendants-Appellees

Appeal No. 92-3743

J. MORRIS ANDERSON,
Plaintiff-Appellant
v.
STEERS, SULLIVAN, McNAMAR & ROGERS and RUTH E. MYER,
Defendants-Appellees

Appellate Court No. 92-3743
Docketed on: 11/13/92
Short Caption: Anderson, J. Morris vs Steers, Sullivan
District Court Judge: John D. Tinder
District Court No. 90 C 1531

The mandate or agency closing letter in this case issued on <>.

		Cost of Each Item
1.	For docketing a case on appeal or review or docketing any other proceeding	_____
2.	For reproduction of any record or paper, per page	_____
3.	Reproduction of briefs	$266.50
	Total	$266.50

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
CIVIL ACTION NO: IP901531C

J. MORRIS ANDERSON,)
Plaintiff,)
v.)
STEERS, SULLIVAN, McNAMAR & ROGERS)
and RUTH E. MYER,)
Defendants.)

ORDER OF DEFENDANTS' MOTION REQUESTING PLAINTIFF T
POST AN ORIGINAL BOND FOR COSTS

COME NOW the Defendants, by counsel, and having filed their Motion Requesting and (sic) Original Bond for Costs, said Motion being in the following words and figures, to wit:

(H.I.)

The Court being duly advised finds that the same should be granted.

IT IS THEREFORE ORDERED that the Plaintiff, J. Morris Anderson, is ordered by this court to file a bond for costs or additional security for costs in the sum of $10,000.00.

----------Date

Judge, United States District Court for the
Southern District of Indiana

APPENDIX-D

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Date: September 17, 1993

BEFORE: Honorable Richard A. Posner, Circuit Judge

No. 92-3743
J. MORRIS ANDERSON
Plaintiff-Appellant
v.
STEERS, SULLIVAN, McNAMAR & ROGERS and RUTH E. MYER,
Defendants-Appellees

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division
No. 90 C 1531, John D. Tinder, Judge

This matter comes before the court for its consideration of the "APPELLANT'S PETITION FOR A REHEARING ON THE COURT'S ORDER OF AUGUST 13TH, 1993 IMPOSING SANCTIONS AND DOUBLE COSTS" filed herein on 8/23/93, by the pro se appellant. On consideration thereof,

IT IS ORDERED THAT "APPELLANT'S PETITION FOR A REHEARING ON THE COURT'S ORDER OF AUGUST 13TH, 1993 IMPOSING SANCTIONS AND DOUBLE COSTS ON APPELLANT" IS DENIED.

(1036 - 010392)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

J. MORRIS ANDERSON,
Plaintiff,

vs.

STEERS, SULLIVAN, McNAMAR & ROGERS and RUTH E. MYER,
Defendant,

CAUSE NO. 1P-90-1531 C

DISMISSAL OF COUNTS I AND V OF PLAINTIFF'S COMPLAINT

This case is before the Court on the defendants' Motion to Dismiss for Failure to State a Claim under Federal Rules of Civil Procedure 12 (b) (6) and the defendants' Motion to Strike plaintiff's complaint under Federal Rules of Civil Procedure 12 (f). For the reasons stated below, the court GRANTS defendants' Motion to Dismiss Counts II, III, and IV of plaintiff's complaint. The court DENIES defendants' Motion to Strike.

Facts

This case arose out of a letter the defendant Ruth Myer, a partner in the defendant law firm Steers, Sullivan, McNamar & Rogers, wrote on behalf of a friend, Joyce Christmas. Christmas is the

president of Miss Black America, Inc., an Indiana corporation. The plaintiff is apparently the owner of a service mark, "Miss Black America Pageant." The letter, dated July 21, 1989, is addressed to the plaintiff and Charles Williams, president of the Black Expo in Indianapolis. In it, Ms. Myer explains that she is counsel for Ms. Christmas. Myer's letter states that Christmas has not consented to plaintiff's use of the name "Miss Black America Pageant" and threatens legal action against the plaintiff for use of the name.

Evidently, Ms. Myer did not mail the letter to the addressees, but instead gave it to her friend, Ms. Christmas. (The defendants have insisted that the writing of a letter was a courtesy for a friend, not a service for a client. The court is unsure of the relevance of this assertion.) The ensuing events are unclear, but the letter fell into the hands of the news media, among others. J. Morris Anderson, pro se, filed a confusing, twenty-six (26) page, five (5) count complaint alleging the following causes of action:

1) Trademark infringement under 15 U.S.C.

1114;
2) Interference with business and contractual relationship (regarding the Black Expo;
3) Interference with business and contractual relationship (regarding Charles Williams);
4) Negligence by the defendants in their dealings with the plaintiff;
5) Misuse of legal process by the defendants.

Analysis

Count I

Plaintiff's first count alleges that defendants infringed his service mark, "Miss Black America," Reg. No. 1,003,647. There is no factual allegation, nor does it appear that plaintiff could ever prove such an infringement against these defendants. The statutory provision defining such an infringement, 15 U.S.C. 1114, states that infringement occurs when an unauthorized person uses in commerce a reproduction, counterfeit, copy or colorable imitation of a registered mark in connection with the sale, distribution or advertising of a product or service.

The only act the plaintiff attributes to the defendants is the writing of the letter outlined

above. It is clear that the letter cannot constitute an infringement of plaintiff's service mark. The letter was not used to sell, distribute, or advertise any product or service that could cause confusion in the marketplace. While Count I of plaintiff's complaint is imaginative, it is also misplaced. It is dismissed.

Count V

Plaintiff's fifth count alleges that the defendants misused "legal procedure." The short answer to this allegation is that there was no "procedure" used here until plaintiff filed his complaint. While plaintiff may be asserting a cause of action arising out of the defendants' representation of an individual, whether that individual be a client or simply a friend, the simple fact is that such representation is an attorney's profession, before and during a lawsuit.

Had the defendants in this case filed a spurious complaint without adequately investigating the facts surrounding the dispute, the fifth count in plaintiff's complaint might have had some teeth.

It is, however, toothless, as pleaded. Count V is, therefore, also dismissed.

Counts II and III

Plaintiff's second and third counts allege tortious interference with a business relationship between the plaintiff and the Indianapolis Black Expo. The elements of this tort are: 1) the existence of a valid business relationship; 2) the defendants' knowledge of the relationship; 3) the defendants' intentional inducement of breach of contract; 4) the absence of justification; and 5) damages resulting from the defendants' action. *Near East Side Community Organization v. Hair*, 555 N.E. 2d 1324 (Ind. St. App. 1990); *Johnson v. Hickman*, 507 N.E. 2d 1014 (Ind. Ct. App. 1987). While the defendants claim the plaintiff has failed to allege the defendants' knowledge of any business relationship, the Court notes that plaintiff has alleged such a relationship. Paragraph 39 of the complaint states in part, "Defendants had proof positive that plaintiff and his Miss Black America Pageant had entered into a contractual relationship to become a part of the Indiana Black Expo. . . ."

The Court finds this to be a sufficient allegation of defendants' knowledge.

The defendants also claim that plaintiff has failed to allege that the defendants lacked justification to act as they did. While it is true that Anderson makes no such specific allegation, the fact that he attributes to defendants the specific goal of ruining his contractual relationship (Complaint, p.16) indicates to the Court that Anderson believes the defendants acted wholly without justification. Holding the plaintiff to a pro se standard of pleading (which the Court will discuss further below), the Court finds that the plaintiff has made sufficient allegations to sustain a claim for interference with a business relationship.

Whether the defendants had knowledge of any contractual relationship between Anderson and the Black Expo, and whether the defendants acted with justification are trial issues, as is the issue of damages. The allegations are sufficient, however, for the claims to survive dismissal at this stage.

Therefore, defendants' motion to dismiss is denied with respect to Counts II and III.

Count IV

Count IV of plaintiff's complaint alleges that defendants acted negligently in their dealings with him. While it seems difficult to see how an Indianapolis attorney and her law firm could have a duty to a Philadelphia promoter, the fact is that the defendant, Ms. Myer drafted a letter threatening plaintiff with legal action. The letter, instead of being sent to the addressees, was distributed in Indianapolis to people interested in the Black Expo. It is obvious that a letter accusing an individual of unlawful conduct could damage his contractual relationships.

The duty of defendants to plaintiff was to refrain from damaging his business in their representation of Ms. Myer's friend. To threaten suit is sometimes the duty of an attorney. To do so privately (i.e. by sending the letter to the threatened party) is part of an attorney's responsibility as a professional. An attorney can

never be certain whether a client (or friend) will act responsibly. If Joyce Christmas caused the letter to become public and damage the plaintiff, the fact that she was in possession of the letter was due to Attorney Myer's failure to send it to plaintiff. Whether the defendants breached their duty to plaintiff is a trial issue, but plaintiff has alleged a duty, a breach of that duty, and that he suffered damages. Thus, the defendants' motion to dismiss is denied as it pertains to Count 4 of this complaint.

Motion to Strike

The defendants have also moved to strike plaintiff's complaint because it fails to make a short and plain statement pursuant to Federal Rules of Civil Procedure 8(a). Defendants concede that the plaintiff, because he is acting pro se should be held to a less stringent standard in pleading his case than an attorney would be. *Estelle v. Gamble*, 429 U.S. 97, *reh. denied*, 429 U.S. 1066 (1976). Defendants, however, assert that this lower standard should not prevent the Court from

dismissing plaintiff's complaint. The cases defendants cite, while recent, are not on point.

The Court in *Godlove v. Bamberger, Foreman, Oswald & Hahn*, 903 F.2d 1145 (7th Cir. 1990) affirmed the trial court's dismissal of the suit because the plaintiff had engaged in dilatory tactics and had refused to obey orders of the court. True, the plaintiff was pro se; but she was an attorney acting pro se. The court is *Justice v. Elrod*, 832 F.2d 1048 7th Cir. 1987) dismissed the pro se plaintiff's suit because the plaintiff refused to sue under the only cause of action that could afford him relief. Finally, the court in *Wilson v. Civil Town of Clayton*, 839 F.2d 375 (7th Cir. 1988) found that the plaintiff could never state a claim under the fact he alleged. None of these dismissals had anything to do with the plaintiff's failure to adhere to the Federal Rules of Civil Procedure. The dismissals were all substantive dismissals; the cases in no way support the dismissal defendants seek here.

It is true, blatantly obvious even, that the

plaintiff's allegations are not stated in short, plain language. But the purpose of the Federal Rules is notice pleading; the Rules are designed to assure that the defendant had notice of the occurrence and the theory of the litigation. While plaintiff's complaint is a difficult read, it is also sufficiently drafted to serve the spirit of the rules. Defendants' pleadings also indicate that the defendants are apprised of the charges against them and the facts surrounding the charges. Plaintiff's complaint is wordy and, at times, ambiguous, but it is not so much so to merit being stricken.

Conclusion

For the foregoing reasons, the Court GRANTS defendants' Motion to Dismiss Counts I and V of plaintiff's complaint and DENIES defendants' Motion to Dismiss counts II, III, and IV of plaintiff's complaint. The Court denies defendants' Motion to Strike.

Defendants are ordered to file their responsive pleading within thirty (15) (sic) days from the

date of this order.

Dated this sixth day of December, 1990.

J. PATRICK ENDSLEY,

Magistrate

United States District Court

Southern District of Indiana

APPENDIX-F

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

J. MORRIS ANDERSON — CIVIL ACTION

V.

JOYCE CHRISTMAS, et al. — NO. 89-8834

MEMORANDUM AND ORDER

BUCKWALTER, J. — AUGUST 29, 1990

On June 13, 1990, the plaintiff filed a motion for judgment by default in which he requested the court to enter the following orders:

1. An order rendering a judgment by default against defendants Joyce Christmas, Miss Black America, Inc., Miss Black Indiana, Inc., Miss Black Indianapolis, Inc., and Pageants, Inc., jointly and severally for the damages demanded in the complaint.

2. An order permanently enjoining defendants jointly and severally from infringing said "Miss Black America Trademark" of plaintiff J. Morris

Anderson in any manner and from engaging in the operation, production, franchising, marketing, publicizing, or otherwise participating in beauty and talent pageants using the names "Miss Black America", "Miss Black America Indiana", "Miss Black America Indianapolis", "Miss Black Indiana", or "Miss Black Indianapolis", and/or Miss Black America in connection with any other state or city.

Pursuant to said motion, this court entered an order setting a hearing for Tuesday, August 21, 1990. The plaintiff was directed to give defendants at least five (5) days notice of the hearing by serving a copy of the court's order upon each defendant by certified mail, return receipt requested.

On the day of this hearing, only the plaintiff appeared, and he did file with the court an Affidavit wherein he stated that the defendant was properly served with the notice of hearing. Shortly thereafter, the plaintiff filed an Affidavit in which he sets forth the monetary losses he sustained arising from the alleged

trademark infringement by defendants. Upon consideration of the motion for judgment by default and the relief requested therein , the following order is entered:

ORDER

Judgment by default is entered against defendants Joyce Christmas, Miss Black America, Inc., Miss Black Indiana, Inc., and Miss Black Indianapolis, Inc., and said defendants are permanently enjoined from infringing upon the Miss Black America trademark of plaintiff J. Morris Anderson and from in any manner engaging in the operation, production, franchising, marketing, publicizing, or otherwise participating in beauty and talent pageants using the name "Miss Black America", "Miss Black America Indiana", "Miss Black America Indianapolis", and/or Miss Black America in connection with any other city or state.

BY THE COURT:

RONALD L. BUCKWALTER, J.

STEERS, SULLIVAN, McNAMAR & ROGERS
ATTORNEYS AT LAW
TWO MARKET SQUARE CENTER, SUITE 500
251 EAST OHIO STREET
P.O. BOX 44126
INDIANAPOLIS, INDIANA 46204

JULY 21, 1989
HAND DELIVERED

J. Morris Anderson, President
MISS BLACK AMERICA BEAUTY PAGEANT
c/o Madame Walker Theater
Indianapolis, Indiana

Charles Williams, President
BLACK EXPO, INC.
3130 Sutherland Avenue
Indianapolis, Indiana 46205

RE: MISS BLACK AMERICA, INC.

Dear Mr. Anderson and Mr. Williams:

We are the attorneys for Miss Black America, Inc., a duly incorporated Indiana corporation of which Joyce Christmas is president.

Ms. Christmas has called to advise that without her authority, consent or permission, Mr. Anderson and Black Expo, Inc. have advertised a beauty contest to take place tomorrow and Sunday at the Madame Walker Theater under the name of "Miss Black America Pageant."

This is to advise both of you that Ms. Christmas

objects most strenuously to your use of the name "Miss Black America" either by itself or in combination with any other words for your beauty pageant, as it is confusingly similar to the name of the Indiana corporation of which she is president. We understand that Mr. Anderson is president of a Pennsylvania corporation known as "Miss Black America Beauty Pageant," but he may use that name in Indiana or any name similar to that of our client only with its express permission, which is herewith denied, or under the provisions of Indiana Code 23-1-23-1 with which he has failed to comply.

Pleased be advised that if you persist in the use of the name "Miss Black America Pageant" or any name confusingly similar to that of Miss Black America, Inc., we shall have no alternative but to take whatever action we deem appropriate, including a court action to recover those damages which our client has sustained and will continue to sustain by reason of your use of a name for your beauty pageant which is confusingly similar to that of a

lawfully organized Indiana corporation.

Very truly yours,

Ruth E. Myer

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

J. MORRIS ANDERSON
P.O. BOX 25668
PHILADELPHIA, PA 19144;
PLAINTIFF,

V.

JOYCE CHRISTMAS, INDIVIDUALLY,
MISS BLACK AMERICA, INC.,
MISS BLACK AMERICA INDIANA, INC. K.,
MISS BLACK AMERICA INDIANAPOLIS, INC., AND
PAGEANTS INC.
STATE HOUSE SENATE CHAMBERS
INDIANAPOLIS, INDIANA 46204,
RUTH E. MEYER, ESQ., INDIVIDUALLY
251 E. OHIO ST. STE 500, INDPLS, IN
DEFENDANTS.

CIVIL ACTION NO. 89-8834

JURY TRIAL DEMANDED

AFFIDAVIT OF RUTH E. MYER

Ruth E. Myer, being first duly sworn, deposes and says:

1. My name is Ruth E. Myer and at all times in question concerning the allegations contained in Plaintiff's First Amended Complaint, I resided in Indianapolis, Marion County, state of Indiana.

2. I am an attorney at law and I am duly admitted to practice law in the state of Indiana.

I am not admitted to practice law in any other state.

3. I have never had an office in the state of Pennsylvania.

4. I have never owned real estate in the state of Pennsylvania.

5. I have never owned any personal property in the state of Pennsylvania.

6. I have never at any time resided in the state of Pennsylvania.

7. I have never hired employees or agents in the state of Pennsylvania.

8. I have never utilized the state or federal courts located in the state of Pennsylvania.

9. I have never conducted any business in the state of Pennsylvania.

10. I first became aware of the existence of the Plaintiff, J. Morris Anderson, when I was asked to write a letter to him on behalf of Joyce Christmas, which I did for her as a courtesy and at no charge.

11. The letter in question, a copy of which is attached to Plaintiff's complaint, was never sent

through the United States Mail, but was hand-delivered by a relative of Joyce Christmas here in Indianapolis, Indiana.

12. Since that date, I have not written any further letters to J. Morris Anderson nor so much as spoken to him over the telephone, and I did not hear anything further from Mr. Anderson until he filed his complaint herein.

13. I have never at any time distributed the letter mentioned above to any newspaper or television station.

14. The majority of witnesses who would testify concerning this matter reside in the state of Indiana.

15. I furthermore state that in accordance with the provisions of Rule 4 (c) (2) (c), Federal Rules of Civil Procedure, I was not served in accordance with the requirements of that rule.

a. There was no Summons served upon me.

b. There were not two copies of a notice and acknowledgement and a return envelope, pre-paid and addressed to the sender, accompanying the sending of the complaint.

Furthermore, the Summons and Complaint were not served together as is required in Rule 4 (d).

16. This Affidavit is made in support of my Motion to Dismiss Plaintiff's Amended Complaint.

17. The statements contained in this Affidavit are based upon personal knowledge and are true and accurate to the best of my knowledge.

Signed this 15th day of February, 1990,

Ruth E. Myer, An Individual

STATE OF INDIANA }
} SS:
COUNTY OF MARION }

Personally appeared the above named Ruth E. Myer and made oath that the foregoing is true and is based upon her own personal knowledge, information and belief, this 15th day of February, 1990.

Julia A. Garrett

Notary Public

My commission expires:
July 8, 1990
I reside in Marion County, Indiana

AMENDMENT V111

TO THE UNITED STATES CONSTITUTION

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV, SECTION I

TO THE UNITED STATES CONSTITUTION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State therein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due access of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL RULE OF CIVIL PROCEDURE I

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity, or in admiralty, with the exceptions stated in rule 81. They shall be construed to secure the just, speedy and inexpensive determination of every action.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

J. MORRIS ANDERSON, P.O. BOX 25668, PHILADELPHIA, PA 19144, Plaintiff,	:	
vs.	:	CIVIL ACTION NO. IP901531C
STEERS, SULLIVAN, McNAMAR & ROGERS ATTORNEYS AT LAW, AND RUTH E. MEYER, ESQ,IND., 251 E. Ohio St.Ste.500, Indpls., IN Defendants.	:	JURY TRIAL DEMANDED

****

C O M P L A I N T

NOW INTO COURT COMES J. MORRIS ANDERSON, plaintiff, pro se, in the above entitled and numbered proceeding, and states:

1. This action in trespass is based upon the infringement by defenddants of plaintiff, J. Morris Anderson's Service Mark, "Miss Black America",. Reg. No. 1,003,647 which was duly and legally issued to his solely owned Corporation, Fashionable Productions, Inc., on January 28, 1975 for

entertainment services, namely presenting a beauty pageant - in CLASS 107 (INT.CL.41); and on August 25th, 1985, said Corporation did duly and legally assign, convey and transfer unto said J. Morris Anderson the entire right, title, and interest in and to said mark and the said registrations thereof, together with the goodwill of the business symbolized by said mark; in addition to defendants having infringed plaintiff's Service Mark with negligence, defendants did interfere with plaintiff's business and contractual relations in the City of Indianapolis and the State of Indiana; this, by utilizing their position of legal prominence to maliciously persecute and prosecute him before the media, the community and his business associates.

2. Plaintiff, J. Morris Anderson, is an individual whose place of business is set forth in the caption hereof. At all relevant times hereto, J. Morris Anderson was and presently is owner of the aforementioned Service Mark - having staged and

produced Miss Black America Pageants in various cities in the U.S. since August 17, 1968 until the present.

3. Defendant Steers, Sullivan, McNamar & Rogers is a Law Firm with its principal offices in the State of Indiana. At all relevant times hereto, the law firm of Steers, Sullivan, McNamar and Rogers used its law firm, legal resources, partners, agents, employees and servants to infringe plaintiff's Service Mark in the State of Indiana, to interfere with plaintiff's business relations concerning said mark and to maliciously persecute and prosecute plaintiff.

4. Upon information and belief, defendant Ruth E. Meyer, Esq., is an individual residing in the State of Indiana. At all relevant times hereto, Ms. Meyer, a partner in the law firm of defendant Steers, Sullivan, McNamar & Rogers did infringe plaintiff's Service Mark in the State of Indiana and proceeded to interfere with plaintiff's business relations concerning said mark.

5. The plaintiff, defendant Law Firm and individual defendant are citizens of different States and the amount in controversy between the parties exceeds the sum of $50,000.00. This Court has subject matter jurisdiction of this action pursuant to 28 USC 1332.

7. This action originates out of trademark infringement. Hence, This Court has original jurisdiction of this action pursuant to 28 USC 1338.

FIRST COUNT IN TRESPASS

(Arising out of trademark infringement)

8. Paragraphs 1 through 12 of this Complaint are incorporated by reference as if set forth in full herein.

9. On or about February 17, 1989 and on several occasions thereafter, defendants' client, Joyce Christmas did contact, plaintiff, J. Morris Anderson via phone in his offices in Philadelphia, PA wherein she informed Mr. Anderson that she was aware that the 1989 MBA Pageant finals were scheduled for Indianapolis, Indiana in July 1989

and she was aware that the final Miss Black America Television Special Program had been staged in the cities of Indianapolis and Gary Indiana for several years and she was desirous of a relationship with the MBA Pageant.

10. During said conversation of February 17th, 1989, Ms. Christmas specifically requested that Anderson grant her the rights to produce Miss Black America Pageants in Indianapolis, Indiana and in the State of Indiana for the specific purpose of sending a winning contestant to the National Competition of the 1989 Miss Black America Pageant and Television Special.

11. Plaintiff Anderson explained to Ms. Christmas that he could not issue her a license to produce a Miss Black America Pageant in Indiana for the year 1989 in view of the fact that plans for the 1989 MBA Pageant had already been finalized and the final event was scheduled for the City of Indianapolis in July of 1989.

12. Ms. Christmas then asked plaintiff

Anderson if he would consider licensing her to produce a local MBA Pageant for 1990.

13. Mr. Anderson explained to Christmas that he could not discuss a license arrangement for the 1990 MBA Pageant until the finals for 1989 had been concluded.

14. At that point, Ms. Christmas asked Anderson to send her some literature on the Miss Black America Pageant in order for her to familiarize herself with same.

15. Plaintiff Anderson complied with the request of Ms. Christmas and forwarded an extensive array of Miss Black America Pageant Material to defendants, including, but not limited to a question and answer brochure on how to become a MBA Pageant Local Director, how to produce a local pageant, and general background material on the Miss Black America Pageant and TV Special.

16. Ms. Christmas thoroughly reviewed plaintiff's Miss Black America Pageant Literature after having engaged in extensive conversations with him under the subterfuge of having a desire to be associated with Plaintiff's Miss Black America Pageant.

17. After picking plaintiff Anderson's brain on the subject of producing a Miss Black America Pageant, defendant Joyce Christmas did, with malice aforethought, engage in pre-meditated calculation to willfully set out and steal the Miss Black America Pageant from plaintiff in May, 1989 by infringing on his "Miss Black America" Service Mark, to wit: (i) by engaging defendant law firm to incorporate the name "Miss Black America"; (ii) by incorporating the name "Miss Black Indiana"; and, (iii) by incorporating the name "Miss Black Indianapolis".

18. Between July 14th, and 22nd, 1989, the week

in which the Miss Black America Pageant and Television Special was produced in Indianapolis, Indiana, defendants (Law firm) Steers, Sullivan, McNamar and Rogers, and Ruth E. Meyer, Esq. infringed said mark by publishing and distributing a letter threatening legal action against plaintiff and including but not limited to the allegation, that defendant Christmas owned rights to plaintiff's mark, "Miss Black America" and that plaintiff was infringing on "Miss Black America Rights which defendant Christmas allegedly owned."

19. For twenty-one years plaintiff Anderson has been the founder, owner and Executive Television Producer of the World's most renowned Black Beauty and Talent Pageant, "Miss Black America Pageant". Hence, J. Morris Anderson has spent the major portion of his adult and professional life staging the Miss Black America Pageant in various cities in the U.S. and causing said Pageant and National Television Special to be aired on Commercial Television Stations throughout

the United States and abroad as a specific means of providing a positive stage upon which Black Women can display their talent, a powerful microphone through which they can air their views and as a strong platform upon which Black Woman can be presented as a Universal Symbol of Pride. However, out of a malicious effort to destroy Anderson's production of the Miss Black America Pageant and prevent him from entering into viable business relations in the Indianapolis, Indiana Community and the State of Indiana, defendants did disrupt plaintiff's business activities and attempt to steal the Miss Black America Pageant from plaintiff.

20. Between July 14th, and 22nd, 1989, the week in which the Miss Black America Pageant and Television Special was produced in Indianapolis, Indiana, defendant, (Law Firm) Steers, Sullivan, McNamar and Rogers, and various agents of said firm, including, but not limited to its partner, defendant Ruth E. Meyer, Esq. infringed said mark by publishing and distributing a letter threatening

legal action against plaintiff and including but not limited to the allegation that an Indiana Corporation named "Miss Black America, Inc., of which a Joyce Christmas was president, owned rights to plaintiff's Service Mark, "Miss Black America" and that plaintiff was infringing "Miss Black America, Inc's." Rights which was an Indiana corporation."

21. Despite the fact that defendant (Law Firm) Steers, Sullivan, McNamar And Rogers, and defendant Ruth E. Meyer, Esq., et al., had specifically and conclusively verified the fact from the Secretary of State of Pennsylvania that The Miss Black America Pageant had been in fact, incorporated in the State of Pennsylvania in 1968 by plaintiff, J. Morris Anderson, they proceeded in may of 1989 with recklessness, negligence and malice aforethought, to incorporate plaintiff's registered name in the State of Indiana anyway.

22. This unjustifiable, act of incorporating plaintiff's name and infringing his service mark was enacted against plaintiff by defendant Steers,

Sullivan, McNamar and Rogers, and defendant Ruth E. Meyer with the full and complete knowledge that plaintiff Anderson had continually used said "Mark" for over twenty years in Interstate Commerce.

23. Defendant (Law Firm) Steers, Sullivan, McNamar and Rogers, and its partner, defendant Ruth E. Meyer, Esquire knew or should have known that plaintiff Anderson HAD A CONTINUING AND VALID SERVICE MARK ISSUED TO HIM BY THE U.S. PATENT OFFICE.

24. Defendant (Law Firm) Steers, Sullivan, McNamar and Rogers is a prestigious Indianapolis, Indiana Law firm with membership in the American Bar Association whose members practice law in Indiana, Ohio and Kentucky and whose partner, Ruth E. Meyer, Esquire is a member of the Bar of Indiana, therefore they are officers of the Court - in essence - defendants represent the law in Indiana - however, with a complete recklessness, heedlessness and brashness, defendants and their

agents disregarded plaintiff's rights by drafting and publishing a letter on the letter head of defendant (Law Firm) Steers, Sullivan, McNamar & Rogers to plaintiff's business associates in the media and his business associated involved with the production of the 1989 Miss Black America Pageant wherein plaintiff was wrongfully accused of not owning the Service Mark, "Miss Black America", and threatened by them with legal action for using his own Service Mark.

25. In the letter published by defendants about plaintiff Anderson, the relevant portions of which are attached hereto as Exhibit "A" and incorporated by reference as if set forth in full herein, defendant (Law Firm) Steers, Sullivan, McNamar & Rogers; and its partner defendant Meyer attacked plaintiff and his service mark with, cruel and vicious threatening statements, including, inter alia, the following statements, "WE ARE THE ATTORNEYS FOR, MISS BLACK AMERICA, INC., INTER ALIA". "WE UNDERSTAND THAT MR. ANDERSON IS

PRESIDENT OF A PENNSYLVANIA CORPORATION KNOWN AS MISS BLACK AMERICA BEAUTY PAGEANT", "WE SHALL HAVE NO ALTERNATIVE BUT TO TAKE WHATEVER ACTION WE DEEM APPROPRIATE, INCLUDING A COURT ACTION TO RECOVER THOSE DAMAGES WHICH OUR CLIENT HAS SUSTAINED AND WILL CONTINUE TO SUSTAIN BY REASON OF YOUR USE OF A NAME FOR YOUR BEAUTY PAGEANT WHICH IS CONFUSINGLY SIMILAR TO THAT OF A LAWFULLY ORGANIZED INDIANA CORPORATION".

26. Said libelous and damaging letter was distributed by defendant (Law Firm) Steers, Sullivan, McNamar & Rogers, and Ruth Meyer, Esq., to the Following Indianapolis Newspapers: the Indianapolis Star, The Indianapolis News, the Indianapolis Recorder, and the Indiana Herald.

SEE LIBELOUS LETTER ATTACHED HERETO AS EX. "A"

27. Consistent with the vicious attack on plaintiff, defendant Ruth E. Meyer, Esq., did speak with The Indianapolis Recorder Newspaper, inter alia, wherein said she was quoted as saying defendant had called the Secretary of State of

Pennsylvania and had, in fact, been specifically informed that plaintiff had incorporated the MBA Pageant in the State of Pennsylvania.

SEE SCANDALOUS AND SLANDEROUS INTERVIEW OF DEFENDANT RUTH E. MEYER, ESQUIRE BY INDIANAPOLIS RECORDER NEWSPAPER ATTACHED HERETO AS EX. "B"

28. The letterhead of defendant (Law Firm) Steers, Sullivan, McNamar & Rogers, with the malicious letter printed thereon was sufficient to cause the leading Black Newspaper to run a front story with headline copy reading: "Indy Woman Sues for Pageant Rights".

SEE SCANDALOUS AND SLANDEROUS INTERVIEW OF DEFENDANT'S AGENT RUTH MEYER BY INDIANAPOLIS RECORDER NEWSPAPER ATTACHED HERETO AS EX. "B

29. By using their prestigious position with the Court against plaintiff, defendants (Law Firm) Steers, Sullivan, McNamar & Rogers and Ruth E. Meyer, Esquire perpetrated a malfeasance of their office - using their privileged positions as an Official Representatives of the Court to step

above the law of the land and to persecute, prosecute and convict plaintiff Anderson of wrong doing in the community, (using a service mark which he actually owned himself with clear undisputed title), this without plaintiff having the benefit of a judge or jury of his peers being present to adjudicate the disputed matter - the defendant, law firm, and defendant Ruth E. Meyer, Esquire took the entire law into their own hands and tried and convicted plaintiff in the media and among the community leaders and in the midst of his production of the 21st MBA Pageant in front of the contestants of same.

30. By using their prestigious positions with the Court against plaintiff, defendant (Law Firm) Steers, Sullivan, McNamar & Rogers and defendant Meyer, Esq. perpetrated a misfeasance of their offices - using their privileged positions as Official Representatives of the Court and noted members of the bar in an unlawful and improper manner to: (i) persecute and prosecute plaintiff

Anderson in the newspapers and television media of the community; and, (ii) to convict plaintiff Anderson of wrong doing in the eyes of his business associates by publishing a legal letter to them with threats against them and plaintiff (for using a service mark which he, in fact, actually owned himself with clear undisputed title).

31. Absolutely defendant (Law Firm) Steers, Sullivan, McNamar & Rogers and defendant Ruth E. Meyer, Esq. did engage in the impropriety - of putting plaintiff on trial in the press, to wit: (i) the letter was read on local television, hence, plaintiff was prosecuted on television (ii) the letter was given the strength of the law by virtue of being on the letterhead of defendant (Law Firm), hence, bearing the prestigious legal position of defendant (Law Firm) Steers, Sullivan, McNamar & Rogers' legal position in the community, (iii) the letter was addressed to and served on plaintiff's business associate (Rev. Charles Williams, President of the Indiana Black Expo) by a process

server sanctioned by defendants, this, while the Black Expo was in progress with an attendance reaching an excess of 400,000 persons; and, (iv) plaintiff was persecuted and prosecuted by defendants before the eyes of the spiritual leadership of the community when defendants' process serving agent interrupted a church service being held for the Miss Black America Contestants and served said legal letter upon the Reverend Damon J. Roach, pastor of the First Christian Baptist church, located at 6190 E. 38th St.. Indianapolis, IN.

32. Said libelous and damaging letter was caused by defendants to be distributed to the Following Indianapolis Television Stations:

SEE LIBELOUS LETTER ATTACHED HERETO AS EX. "A"

33. Defendant did cause said libelous letter to be delivered to Indianapolis Television Stations, wherein it was published loud and clear on the TV Airways while plaintiff was actually in

the midst of producing the 21st Annual Miss Black America Pageant and Television Special in Indianapolis, Indiana.

34. Plaintiff has notified defendants that it has infringed the mark of plaintiff to no avail.

35. As a result of the reckless and malicious actions of defendants (Law Firm) Steers, Sullivan, McNamar & Rogers, and Ruth E. Meyer, Esquire against plaintiff, he is afraid to venture into the City of Indianapolis, Indiana to conduct his business affairs where he must attempt to secure sponsors for subsequent productions of Miss Black America Pageants - this because plaintiff is afraid defendants are out to get him and prevent him from operating his business activities.

36. As a specific result of defendants' malicious actions against plaintiff he has become afraid to engage in business activity in Indianapolis out of fear that defendants might find a way to use its arm of the law and cause him misery, mental pain and grief and ruin his business affairs.

37. As a result of the negligence and maliciousness of defendants' actions, supra, against plaintiff, he has and is yet suffering mental pain, has been unable to perform crucial duties relevant to the production of the Miss Black America Pageant and Television Special in Indianapolis and he was deliberately prevented by defendant from transacting his business affairs related to the Miss Black America Pageant and Television special and was afraid to appear in public during the Miss Black America Pageant & TV Special proceedings.

WHEREFORE plaintiff, J. Morris Anderson demands:

(a) That defendant (Law Firm) Steers, Sullivan, McNamar & Rogers, and Ruth E. Meyer, Esq. their agents and employees be permanently enjoined from infringing said "Miss Black America Trademark" of plaintiff J. Morris Anderson in any manner and from engaging in the operation, production, franchising, marketing, publicizing, or otherwise

participating in beauty and talent pageants using the names, "Miss Black America", Miss Black America Indiana", Miss Black America Indianapolis", "Miss Black Indiana", or "Miss Black Indianapolis";

(b) that defendants (Law Firm) Steers, Sullivan, McNamar & Rogers, and Ruth E. Meyer, Esq. be required to pay to plaintiff, Anderson such damages as he has sustained in consequence of defendants' infringement of said trademark.

(c) that defendants (Law Firm) Steers, Sullivan, McNamar & Rogers, and Ruth E. Meyer, Esq. pay to plaintiff Anderson the costs of this action and reasonable attorney's fees to be allowed to plaintiff by the Court.

(d) that plaintiff have such other relief that is just.

J. Morris Anderson
Plaintiff, pro se
P. O. Box 25668
Phila. PA 19144
(215) 844-8872

SECOND COUNT IN TRESPASS

(Arising out of Interference with business and contractual relations)

38. Paragraphs 1 through 37 of this Complaint are incorporated by reference as if set forth in full herein.

39. Defendants had proof positive that plaintiff and his Miss Black America Pageant had entered into a contractual relationship to become a part of the Indiana Black Expo, hence, defendants had specific knowledge that plaintiff, J. Morris Anderson had entered into such a contractual relationship with the Indiana Black Expo wherein the 1989 Miss Black America Pageant and Television Special had become a part of the official activities of the 1989 Indiana Black Expo.

40. Defendant (Law Firm) Steers, Sullivan, McNamar & Rogers, knew or should have known that the Black Expo is highly sensitive to being

associated with any type of organization which is crippled and beleaguered by controversial issues that could culminate in a scandal and damage the good will of the Black Expo.

41. Therefore, defendant did, while the Black Expo was in progress with over 400,000 attendees, in fact, cause a copy of the malicious letter to be hand delivered and served upon the Honorable, Rev. Charles Williams, President of the Indiana Black Expo in which the Black Expo and plaintiff were threatened with legal action for the Black Expo's participation in the use plaintiff's service mark, "Miss Black America".

42. Defendants knew that such malicious action on their part would dampen the contractual relations between plaintiff and the Black Expo.

43. Hence, it was the specific goal of defendants to ruin plaintiff's contractual relations with the Black Expo by hand delivering a letter to it while the Black Expo was in progress with an excess of 400,000 attendees, defendant

accused the Expo and plaintiff of operating illegally in the State of Indiana without rights to the name "Miss Black America."

SEE LIBELOUS LETTER ATTACHED HERETO AS EX. "A"

44. As a proximate result of defendants' willful actions against plaintiff, the Black Expo refused to sign a long term contact with plaintiff in 1989.

Wherefore, plaintiff, J. Morris Anderson prays that judgment be entered against defendants, (Law Firm) Steers, Sullivan, McNamar & Rogers and Ruth E. Meyer, Esquire for:

(a) compensatory damages in an amount in excess of $100,000.00

(b) punitive or exemplary damages in excess of $1,000,000.00

(c) costs, attorney's fees and such other relief as the Court deems necessary and appropriate.

J. Morris Anderson
Plaintiff, pro se
P. O. Box 25668
Phila. PA 19144
(215) 844-8872

THIRD COUNT IN TRESPASS

(Airsing out of Interference with business and contractual relations)

45. Paragraphs 1 through 45 of this Complaint are incorporated by reference as if set forth in full herein.

46. Paragraphs 1 through 7 of this Complaint are incorporated by reference as if set forth in full herein.

47. As a means of facilitating the production of the 1989 Miss Black America Pageant in Indianapolis, Indiana between July 14th and 22nd, 1989. Plaintiff entered into a contractual relationship with the Reverend Damon J. Roach, pastor of the First Christian Baptist church, located at 6190 E. 38th St.. Indianapolis, IN.

48. As a specific technique of interfering with the business and contractual relations between

plaintiff and the First Christian Baptist Church, on or about July 21, 1989 on the eve. of the final Miss Black America Pageant, an agent for defendant did forcibly enter the First Christian Baptist Church, did search the entire premises, allegedly to serve the libelous legal letter upon plaintiff, J. Morris Anderson.

49. When defendants' agent did not find J. Morris Anderson in the Church, supra, said agent commenced to taking photographs of various members of the congregation of First Christian Baptist Church and members of the staff of the Miss Black America Pageant.

50. When members of plaintiff's staff refused to accept service of a legal document on behalf of plaintiff, J. Morris Anderson who was not present during the invasion of the church by defendants' agent, said agent of defendants served the libelous legal letter on pastor Roach himself and took a picture of pastor Roach.

SEE LIBELOUS LETTER ATTACHED HERETO AS EX. "A"

51. This attack on plaintiff's business and contractual relations was enacted specifically to interfere with plaintiff and cause his business associates to terminate relations with him.

52. Defendants knew or should have known that Rev. Roach and the distinguished First Christian Baptist church are highly sensitive to being associated with any type of organization which is crippled and beleaguered by controversial issues that could culminate in a scandal and damage the good will of the Church.

53. As a proximate result of defendants' willful actions against plaintiff, Pastor Roach cancelled an agreement with plaintiff wherein plaintiff was to create a Black Christian Television Network on behalf of Pastor Roach and the First Christian Baptist Church.

Wherefore, plaintiff, J. Morris Anderson prays that judgment be entered against defendant, Law

Firm) Steers, Sullivan, McNamar & Rogers for:

(a) compensatory damages in an amount in excess of $100,000.00

(b) punitive or exemplary damages in excess of $1,000,000.00

(c) costs, attorney's fees and such other relief as the Court deems necessary and appropriate.

J. Morris Anderson
Plaintiff, pro se
P. O. Box 25668
Phila. PA 19144
(215) 844-8872

APPENDIX L-27

FOURTH COUNT IN TRESPASS

(Airsing out of Negligence)

54. Paragraphs 1 through 53 of this Complaint are incorporated by reference as if set forth in full herein.

55. Defendant (Law Firm) Steers, Sullivan, McNamar & Rogers, has over fourteen (14) lawyers associated with said defendant, law firm, each one a practicing attorney and each a member of the bar of at least one or more States - nevertheless, with all the resources, supra at its disposal, defendant (Law Firm) and its partner, defendant Ruth E. Meyer, Esq. failed to exercise their duty to use reasonable care in conforming to an accepted standard of legal conduct, to wit: (i) defendants breached their absolute duty to plaintiff to take the necessary steps that an ordinary, normal, responsible law firm would have taken as a matter of course, specifically: to have conducted an investigation to insure themselves that plaintiff Anderson was guilty of wrongdoing in using his own

service mark of "Miss Black America" in the State of Indiana prior to taking the action that did, in fact, subject plaintiff Anderson to undue harm, harassment, and severe damages.

56. Defendants did, in fact, commit negligent wrongdoing against plaintiff J. Morris Anderson - by operating outside of the canons of professional ethics and having used their duly registered and certified law firm to engage in a malicious, reckless and willful persecution of him.

57. Defendant Ruth E. Meyer, Esq. has stated in an affidavit that she did not charge Ms. Joyce Christmas for writing the libelous letter which caused plaintiff so much harm, so there was no privy of contract between defendants and Ms. Christmas.

58. Defendant Meyer alleged she did the damage to Anderson as a favor for a friend - not as a service for a client.

59. The attack of Anderson by defendants was a vicious act perpetrated maliciously by them.

60. Defendant are guilty of reckless and negligent misbehavior against plaintiff - this, because defendants operate a duly registered law firm with membership in the bar; defendants have been entrusted by the Court to represent it with discretion; however, defendants mis-used the authority granted to them by the Court and the bar association to which they belongs by: (i) Incorporating the trade name "Miss Black America", in the State of Indiana, (ii) Using said incorporation as a basis of interfering with plaintiff's business relations and business activities (his production of the 1989 Miss Black America Pageant in the city of Indianapolis, Indiana).

61. As a proximate result of defendants' negligence, plaintiff has suffered severe harm to his business, his reputation has been severely

damaged, he has suffered mental pain and loss important business relationships.

Wherefore, plaintiff, J. Morris Anderson prays that judgment be entered against defendants, Law Firm) Steers, Sullivan, McNamar & Rogers and Ruth E. Meyer Esquire for:

(a) compensatory damages in an amount in excess of $100,000.00

(b) punitive or exemplary damages in excess of $1,000,000.00

(c) costs, attorney's fees and such other relief as the Court deems necessary and appropriate.

J. Morris Anderson
Plaintiff, pro se
P. O. Box 25668
Phila. PA 19144
(215) 844-8872

APPENDIX L-31

FIFTH COUNT IN TRESPASS

(Airsing out of Misuse of legal procedure)

62. Paragraphs 1 through 60 of this Complaint are incorporated by reference as if set forth in full herein.

63. Defendant (Law Firm) Steers, Sullivan, McNamar & Rogers and its partner, defendant Ruth E. Meyer, Esquire initiated a Civil Proceeding against plaintiff J. Morris Anderson and his service Mark "Miss Black America Pageant" by incorporating the exact name "Miss Black America, Inc." in the State of Indiana.

64. Defendants had full knowledge that plaintiff Anderson had incorporated said "Miss Black America" Pageant in 1968 in the State of Pennsylvania and had been operating said pageants in Interstate Commerce for over twenty years, hence, defendant acted without probable cause.

65. Defendants were specifically active in the

continuance of the initial act of wrongfully incorporating plaintiff's service mark by publishing and distributing a letter accusing plaintiff in the media and to his business associates of not having a right to the name "Miss Black America Pageant", despite the fact that J. Morris Anderson's Service Mark, "Miss Black America",. Reg. No. 1,003,647 which was duly and legally issued to his solely owned ram.

*****

66. Hence, defendants did maliciously and with reckless negligence, lambast plaintiff Anderson before his business colleagues and the leadership of the community by publishing the legal letter on its letterhead captioned: "RE: Miss Black America, Inc."

67. Defendants did publish the threatening letter solely for the purpose of depriving plaintiff Anderson of the use of his property, namely, "The Miss Black America Pageant and

Television Special", hence, defendants had no intention at all to adjudicate the ownership of said title, "Miss Black America " in a legitimate forum of law, but of preventing plaintiff Anderson from successfully conducting his business affairs and ultimately marketing his property, "The Miss Black America Pageant and Television Special".

68. Defendant's Letterhead was used by defendant Law Firm and defendant Meyer, Esq. as a weapon to launch a war of words against plaintiff which did cause plaintiff to appear as a fraud before his business associates, his sponsors, his production facilities, the contestants of the 1989 Miss Black America Pageant and the community at large.

69. Defendant (Law Firm) Steers, Sullivan, McNamar & Rogers and defendant Ruth E. Meyer specifically initiated the action against plaintiff with full knowledge that the claim was invalid.

70. Defendants' positions as a law firm and lawyer respectively obligated them to conduct a reasonable investigation to determine whether plaintiff Anderson owned the Service Mark, "Miss Black America".

71. Defendants used their positions as a duly registered Law Firm and Lawyer respectively as a Weapon against plaintiff Anderson to cause him to appear in a bad light in the community - as a knife to his spine to accuse Anderson of being illegitimate before the media, the community, his business associates and the contestants of the 1989 Miss Black America Pageant and Television Special Program.

72. Defendants attacked plaintiff when he was most vulnerable - on the 31st of July 1989 - on the eve of the 21st Annual Miss Black America Pageant Television Special - while plaintiff Anderson was right, smack, dab in the midst of producing his television special program and was unable to defend

himself against defendant's malicious attack upon him.

73. Defendant Meyer has stated in a sworn statement that the attack on Anderson and the infringement of his trademark by her and defendant law firm was done as a favor for a friend and not as a paid service for a client which makes the tort worse than if it were a paid service for a client.

SEE AFFIDAVIT OF DEFENDANT MEYER ATTACHED HERETO AS EXHIBIT "C"

74. Defendant Meyer and defendant Steers, Sullivan, McNamar & Rogers
had such little regard for the rights of plaintiff Anderson that they willfully and maliciously took it upon themselves to knowingly infringe Anderson's Mark, attack him publicly and interfere with his business relations for the sheer "fun of it", this, not as a business affair between lawyer and client, on the contrary, as an independent Civil Wrong against Anderson, committed as an isolated act by

defendants Meyer and defendant Law firm.

75. As a proximate result of defendants' actions, plaintiff has suffered severe harm to his business, his reputation has been severely damaged, he has suffered severe harm to his person, including but not limited to emotional harm, mental distress, and loss of advantageous business relations.

76. As an absolute result of defendants' actions plaintiff has been specifically turned down by prestigious persons in Indianapolis who plaintiff has attempted to recruit to serve on the Miss Black America Pageant Committee.

Wherefore, plaintiff, J. Morris Anderson prays that judgment be entered against defendant, (Law Firm) Steers, Sullivan, McNamar & Rogers and defendant Ruth E. Meyer, Esq. for:

(a) compensatory damages in an amount in excess of $100,000.00

(b) punitive or exemplary damages in excess

of $1,000,000.00

(c) costs, attorney's fees and such other relief as the Court deems necessary and appropriate.

J. Morris Anderson
Plaintiff, pro se
P. O. Box 25668
Phila. PA 19144
(215) 844-8872

APPENDIX M

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

J. MORRIS ANDERSON, :
P.O. BOX 25668, :
PHILADELPHIA, PA 19144, :
:
Plaintiff, :

vs. : CIVIL ACTION NO.
: IP901531C
:
STEERS, SULLIVAN, :
McNAMAR & ROGERS :
ATTORNEYS AT LAW, AND :
:
RUTH E. MEYER, ESQ,IND., : JURY TRIAL DEMANDED
251 E. Ohio St.Ste.500, :
Indpls., IN :
:
Defendants. :

****

RESPONSE OF PLAINTIFF, J. MORRIS ANDERSON
TO MOTION OF DEFENDANTS REQUESTING THE
POSTING OF A BOND BY PLAINTIFF

AND NOW INTO COURT comes plaintiff praying for this motion to be denied by this just and equitable Judicial Body. Plaintiff, supports his opposition to this motion in his memorandum of law attached hereto.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

J. MORRIS ANDERSON, P.O. BOX 25668, PHILADELPHIA, PA 19144, Plaintiff, vs. STEERS, SULLIVAN, McNAMAR & ROGERS ATTORNEYS AT LAW, AND RUTH E. MEYER, ESQ,IND., 251 E. Ohio St.Ste.500, Indpls., IN Defendants.	:	CIVIL ACTION NO. IP901531C JURY TRIAL DEMANDED

****

REMORANDUM OF LAW OF PLAINTIFF, J. MORRIS ANDERSON IN RESPONSE TO DEFENDANTS' MOTION REQUESTING THE POSTING OF A BOND BY PLAINTIFF

PLAINTIFF SHOULD NOT BE COMPELLED TO POST A BOND IN ORDER TO PROSECUTE DEFENDANTS FOR THE CIVIL WRONGS THEY PERPETRATED AGAINST HIM

Clearly, the absolute discretion of this Honorable Court should direct it to grant a motion in this action in the light most favorable to plaintiff.

Defendants have moved this Court to impose a bond on plaintiff as a cruel means of thwarting his prosecutorial efforts in this controversy. This, since plaintiff already has the expensive burden of prosecuting this action in the State of Indiana in which he does not reside; and, this, since plaintiff was the party attacked by defendants.

Were this Honorable Judicial Body to grant defendants' motion and impose a financial burden upon plaintiff in the form of a bond, it would in fact, cause plaintiff to endure double financial woes - all at the hands of defendants. Plaintiff is already suffering anguish, heartache and misery and pain as a result of defendants' attacks upon him. Plaintiff's business has suffered losses as a specific result of plaintiff's malicious attacks upon him.

Defendants are moving this Court to impose a monstrous, and unusual financial burden upon plaintiff as a specific means of making it difficult for plaintiff to prosecute them for the

tortious civil wrongs they committed against him as follows:

1. Incorporated plaintiff's service mark;

2. Published a threatening letter about plaintiff to which service of same was not limited to plaintiff but also to his most advantageous business associate in Indianapolis, Indiana, (The Black Expo) threatening to drag both of them into Court if they used plaintiff's registered name (The Miss Black America Pageant & Television Special) in the City of Indianapolis, Indiana;

SEE EXHIBIT "A" ATTACHED HERETO

3. Made statements to the press, threatening plaintiff if he continued to do business using his own MBA Pageant service mark.

SEE EXHIBIT "B" ATTACHED HERETO

4. Distributed the threatening letter to all Indianapolis Television Stations and caused the threatening letter to be read on several stations in Indianapolis;

5. Used their positions as bonafide officers of the Court and their eminent membership in several

chapters of the American Bar Association to malign plaintiff, slaughter his reputation and destroy plaintiff's business relations in the Indianapolis Community and prevent from being able to successfully promote and produce the Miss Black America Pageant in the State of Indiana.

6. Burst into the first Christian Baptist church where services were being conducted in association with plaintiff's Miss Black America Pageant and proceeded to take pictures of the members and to serve the libelous legal letter on Rev. Roach, pastor of the church and to take his picture as he was served the letter.

As a specific result of the civil wrongs perpetrated against plaintiff, by defendants, he has lost money to the point where he can not afford to post a bond as a means of prosecuting defendants. It is the fault of defendants that plaintiff is without funds. The specific purpose behind defendants moving this Court to impose a bond upon plaintiff is to place a financial deterrent in front of plaintiff to thwart his

efforts in prosecuting them for their tortious civil wrongs against him.

Defendants were the ones who maliciously destroyed plaintiff's business activities by serving a libelous legal letter upon the Rev. Charles Williams, President of the Indiana Black Expo in which they threatening to file suit against the Black Expo if it did business with plaintiff; defendants were the ones who went to the Indianapolis Recorder Newspaper and maligned and slandered and libeled plaintiff therein; defendants were the ones who caused the libelous legal letter they wrote to be hand delivered to each television station in Indianapolis and caused said letter to be read on television. Defendants were the ones who caused plaintiff's Miss Black America Pageant to be interrupted with television newspeople and cameramen questioning him and his staff about the libelous letter which defendants published about him. This letter, which had the impact and effect of the law, since defendants are officers of the Court and distinguished members of the bar.

Defendants are the precise ones who specifically engaged in the encroachment and infringement of all aspects of plaintiff's Miss Black America Pageant business affairs in Indianapolis, including, but not limited to his, Service Mark, his business Associates, the media and the Indianapolis Community in general;

If there should be a bond imposed upon a party to this action, it should be imposed upon the party defendants, this, since defendants were the ones who attacked plaintiff. Defendant Meyer, Esq. was the one who went public (she was interviewed by the Indianapolis Recorder, wherein she persisted in her attempt to destroy plaintiff and his business by repeated her threats of bringing legal action against Anderson for using his own registered trade mark.

Therefore, plaintiff pleads with this Court and prays that it will deny defendants' motion to impose a financial burden upon plaintiff by compelling him to post a bond which will serve as a deterring factor in his prosecution of defendants

for their alleged wrongs against him.

J. Morris Anderson
Plaintiff, pro se
P. O. Box 25668
Phila. PA 19144
(215) 844-8872

APPENDIX N

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

J. MORRIS ANDERSON, P.O. BOX 25668, PHILADELPHIA, PA 19144, Plaintiff, vs. STEERS, SULLIVAN, McNAMAR & ROGERS ATTORNEYS AT LAW, AND RUTH E. MEYER, ESQ,IND., 251 E. Ohio St.Ste.500, Indpls., IN Defendants.	:	CIVIL ACTION NO. IP901531C JURY TRIAL DEMANDED

****

PLAINTIFF' S OBJECTION AND MOTION TO RECONSIDER THE COURT' S RULING OF J U L Y 1 6, 1 9 9 2

COME NOW plaintiff, and pursuant to local rule-M-6 objects to His Honor's July 16, 1992 Ruling granting defendants' motion to dismiss and he moves the Court to reconsider its Order dismissing his Complaint as a result of plaintiff's not having posted a cost bond, however, granting plaintiff 10 days from his reception of said Order to post the bond in order to reopen his cause of action. Plaintiff received said order on July 21,

1992.

Plaintiff supports his pleas for reconsideration in his memorandum of law attached hereto.

WHEREFORE, plaintiff prays that this Honorable Court will reconsider its Order dismissing this action and enter a ruling in his favor whereupon the bond will be reduced and plaintiff will be given ample time to post same.

J. Morris Anderson
Plaintiff, pro se
P. O. Box 25668
Phila. PA 19144
(215) 844-8872

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

J. MORRIS ANDERSON, P.O. BOX 25668, PHILADELPHIA, PA 19144, Plaintiff, vs. STEERS, SULLIVAN, McNAMAR & ROGERS ATTORNEYS AT LAW, AND RUTH E. MEYER, ESQ,IND., 251 E. Ohio St.Ste.500, Indpls., IN Defendants.	:	CIVIL ACTION NO. IP901531C JURY TRIAL DEMANDED

****

MEMORANDUM OF LAW OF PLAINTIFF J. MORRIS ANDERSON IN SUPPORT OF HIS MOTION TO RECONSIDER THE COURT'S ORDER TO DISMISS

BACKGROUND

On May 26, 1992 this Court entered an Order granting the motion of defendants to compel plaintiff, pro se J. Morris Anderson to file a $10,000.00 cost bond or additional security for costs in the sum of $10,000.00.

On June 30, 1992 defendants filed a motion to dismiss plaintiff's Complaint on the grounds that despite the fact that the Court had not specified

a time for plaintiff to post said bond, their position was that plaintiff should, nevertheless, have posted same within thirty days of the date of the Order.

On July 16, 1992, the Court agreed with defendants' motion and dismissed this cause with the stipulation attached that it could be reopened providing plaintiff "files a bond for costs or additional security for costs in the sum of $10,000.00 within ten (10) days from the date of his receipt of the Order.

Plaintiff received the Order on Monday, July 21, 1992.

LEGAL ARGUMENT

The bond totaling $10,000.00 imposes a monstrous financial burden upon plaintiff. Plaintiff has already suffered enough because of the damages he experience as a result of defendants' negligence as cited in the Complaint.

Defendants' total motive behind moving

the Court to impose the bond was specifically to punish plaintiff for filing his Compliant against them and to discourage plaintiff from pursuing his prosecution of this cause of action.

Since the Court has ruled it will not allow plaintiff more time to post the bond, plaintiff respectfully requests that the Court lower the bond to a reasonable amount, such as $1,000.00 or $2,000.00. In addition, plaintiff respectfully asks the Court to impose a reasonable amount of time in which to file said bond. This, to ease the burden it has placed upon plaintiff by ruling that the bond must be posted within ten days of plaintiff's receipt of said Order.

Defendants' original motion to compel plaintiff to post a plaintiff's bond was based on defendants' argument that since plaintiff was not a resident and property owner in the State of Indiana, he should be compelled to post a bond in the event he did not prevail at trial and in the

event there were costs assessed against him. Plaintiff's argument to the Court was that a bond was punitive and was designed to dissuade plaintiff from pursuing his prosecution of defendants for their alleged wrongful acts against him.

Defendants cite their expenditure of approximately $1,100.00 to defend against plaintiff's Complaint which was originally filed in the Eastern District of Pennsylvania. Certainly there is nothing defendants have alleged to justify compelling plaintiff to post a $10,000.00 bond, which is extremely excessive. Therefore, the amount of the bond should be reduced within reason and a plausible amount of time alloted in which to post said bond.

Clearly its a dangerous precedent to force plaintiffs who have been injured to post huge bonds if they elect to sue the defendants who caused or were the perpetrators of the alleged damages.

It is plaintiff's position that (i) the imposition of the bond is burdensome and he should

not be required to place a bond at all; (ii) the bond is too high, since bonds of this type require dollar for dollar security for a bonding company to handle such, therefore, it should be lowered to a reasonable amount; and, (iii) if the Court will not lower the bond, plaintiff should not be required to post the bond which the Court has ordered prior to the commencement of the trial; Plaintiff feels that were this Honorable Court to order plaintiff to post said bond sixty (60) days prior to the date of trial, it would satisfy the basic logic which was used by defendants to cause the Court to grant the motion in their favor, anyway. It makes absolute sense for the trial date to govern when a plaintiff's bond should be posted. On the other hand, a reasonable time to impose the bond would be 180 days from this date; This, since the bond is based primarily on cost which defendants allege they might expend defending themselves against plaintiff's allegations at trial.

Providing the Court thinks contrary to

plaintiff's suggestion that the Court set the date plaintiff should post the bond at sixty days prior to trial, plaintiff suggests the Court consider setting the date at which plaintiff should post the bond at or near 180 days from the present time. Clearly, defendants' interests would be satisfied and the Court would not prematurely be placing a burden upon plaintiff which borders near a punishment of him for filing his Complaint against defendants. Clearly, there is not a valid reason for causing plaintiff to post said bond when the trial date has not been set.

It is without dispute that the bond will drain plaintiff of his financial resources and cause him and his family to suffer whenever he is required to post same. However, to cause him to post said bond when no trial date has even been set is even more punitive and burdensome to plaintiff.

THEREFORE, plaintiff pleads with this Honorable Court to deny defendants motion to dismiss and

issue a ruling which will allow plaintiff to post said bond sixty (60) days prior to trial.

J. Morris Anderson
Plaintiff, pro se
P. O. Box 25668
Phila. PA 19144
(215) 844-8872

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

J. MORRIS ANDERSON
Plaintiff,

v. CAUSE NO.

STEERS, SULLIVAN, McNAMAR & ROGERS and RUTH E. MYER IP 90-1531-C

ORDER DISMISSING CAUSE

This matter comes before the Court on the plaintiff's complaint, the Court's Order of May 26, 1992, which directed the plaintiff to "file a bond for costs or additional security for costs in the sum of $10,000.00," the defendants' Motion to Dismiss for failure to post said bond, and the plaintiff's Response to Defendants' Motion to Dismiss and Memorandum in Support thereof, which urged the Court to deny the defendants' Motion to Dismiss and permit the plaintiff to post bond sixty days prior to trial. In the alternative, the plaintiff urges the Court stated that he should be permitted to post bond "at or near 180 days from the present time [(180 days from July 10, 1992, the date his Response was filed)]."

The defendants observe that while the Magistrate Judge's Order to post bond did not specify a time within which the plaintiff was required to comply, "a reasonable time to comply would be thirty (30) days, which time has now passed." Motion to Dismiss, p.1. The Court agrees, and concludes that this causes should be DISMISSED. This cause will be reopened if the plaintiff files a bond for costs or additional security for costs in the sum of $10,000.00 within ten (10) days from the date of his receipt of this order.

IT IS SO ORDERED THIS 16TH DAY OF JULY, 1992.

JAMES E. ROLAND, U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

J. MORRIS ANDERSON,
Plaintiff,

V.

CAUSE NO.

STEERS, SULLIVAN, McNAMAR & ROGERS and RUTH E. MYER
Defendants.

IP 90-1531-C

ENTRY

This cause is before the Court on the plaintiff's objection and motion to reconsider the Court's ruling of July 16, 1992, in which the plaintiff's action was dismissed for his failure to post a cost bond heretofore ordered on May 22, 1992. Plaintiff failed to file the bond or to take any other action concerning same and this Court then dismissed the cause. After ignoring the Court's order for two (2) months and the dismissal of the suit, plaintiff still seeks to avoid posting the bond but seeks reinstatement of his action.

Plaintiff's only argument is that posting such a bond would be onerous and that the amount is excessive. Neither of these arguments were timely

raised and the time for raising same has long expired. Plaintiff has failed to show why such bond would be onerous or the amount excessive. Costs in actions such as this often exceed fifteen to twenty thousand dollars and the amount set was carefully considered in light of the nature and status of the case.

The original motion for setting of a cost bond was filed in August, 1990. Plaintiff did not object to the bond. The Court delayed ruling on the motion until after it was determined that the action would proceed. The Court finds no basis to set aside the ruling of July 16, 1992, and the Motion for Reconsideration is DENIED.

The plaintiff will be allowed an additional twenty-one (21) days from the date of this order to post the cost bond and reinstate the action.

Dated this 9th day of October, 1992.

John Daniel Tinder

United States District Judge
Southern District of Indiana

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

J. MORRIS ANDERSON, :
P.O. BOX 25668, :
PHILADELPHIA, PA 19144, :
:
APPELANT, :
vs. : DOCKET NO.
: 92-3743
:
STEERS, SULLIVAN,McNAMAR :
& ROGERS ATTORNEYS AT LAW: LOWER COURT DOCKET
ATTORNEYS AT LAW, AND : NO. IP901531C
:
RUTH E. MEYER, ESQ, IND.,:
251 E. Ohio St. Ste. 500,:
Indpls., IN :
:
APPELLEES. :

****

A P P E L L A N T' S B R I E F

APPEAL FROM ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA ENTERED OCTOBER 9TH, 1992

J. Morris Anderson
Plaintiff, pro se
P. O. Box 25668
Phila. PA 19144
(215) 844-8872

Michael R. Franceschini, Esquire
STEERS. SULLIVAN, McNAMAR & ROGERS
Two Market Square Center, Ste. 500
251 East Ohio Street
P.O. Box 44126
Indianapolis, IN 46204

Dated: December 21, 1992

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

J. MORRIS ANDERSON, P.O. BOX 25668, PHILADELPHIA, PA 19144,	:	
APPELANT,	:	
vs.	:	DOCKET NO. 92-3743
STEERS, SULLIVAN,McNAMAR & ROGERS ATTORNEYS AT LAW ATTORNEYS AT LAW, AND	:	LOWER COURT DOCKET NO. IP901531C
RUTH E. MEYER, ESQ, IND., 251 E. Ohio St. Ste. 500, Indpls., IN	:	
APPELLEES.	:	

****

C I R C U I T R U L E 3(C)
J U R I S D I C T I O N A L S T A T E M E N T

JURISDICTION OF THE SEVENTH CIRCUIT COURT OF APPEALS

This Court (The Seventh Circuit Court of Appeals) has subject matter jurisdiction over this appeal pursuant to 28 USC 1292.

JURISDICTION OF THE LOWER COURT (SOUTHERN DISTRICT OF INDIANA)

This action was originally filed in the United States District Court for the Eastern District of Pennsylvania pursuant to 28 USC 1332; however, pursuant to 28 USC 1404, the United States District Court for the Eastern District of Pennsylvania transferred this action to the United States District Court for the Southern District of Indiana.

DATE LOWER COURT DENIED PLAINTIFF'S RULE MOTION FOR RECONSIDERATION

The District Court denied appellant's motion to reconsider on October 9, 1992.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

J. MORRIS ANDERSON, P.O. BOX 25668, PHILADELPHIA, PA 19144, APPELANT, vs. STEERS, SULLIVAN,McNAMAR & ROGERS ATTORNEYS AT LAW: ATTORNEYS AT LAW, AND RUTH E. MEYER, ESQ, IND., 251 E. Ohio St. Ste. 500, Indpls., IN APPELLEES.	:	DOCKET NO. 92-3743 LOWER COURT DOCKET NO. IP901531C

****

STATEMENT OF ISSUES INVOLVED

DID THE LOWER COURT ABUSE ITS DISCRETION IN IMPOSING A $10,000.00 PLAINTIFF'S BOND ON APPELLANT?

DOES THE IMNPOSITION OF A $10,000.00 BOND POSE A METHOD OF PUNISHING A PLAINTIFF AND PREVENTING HIM FROM REDRESSING HIS GRIEVANCES IN A COURT OF LAW?

S C O P E O F R E V I E W:

This issue is subject to plenary review

J. Morris Anderson
Plaintiff, pro se
P. O. Box 25668
Phila. PA 19144
(215) 844-8872

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

J. MORRIS ANDERSON, P.O. BOX 25668, PHILADELPHIA, PA 19144, APPELANT, vs. STEERS, SULLIVAN,McNAMAR & ROGERS ATTORNEYS AT LAW ATTORNEYS AT LAW, AND RUTH E. MEYER, ESQ, IND., 251 E. Ohio St. Ste. 500, Indpls., IN APPELLEES.	:	DOCKET NO. 92-3743 LOWER COURT DOCKET NO. IP901531C

****

NOTICE OF APPEAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

J. MORRIS ANDERSON, P.O. BOX 25668, PHILADELPHIA, PA 19144, APPELANT, vs.	:	DOCKET NO. 92-3743
STEERS, SULLIVAN,McNAMAR & ROGERS ATTORNEYS AT LAW: ATTORNEYS AT LAW, AND RUTH E. MEYER, ESQ, IND., 251 E. Ohio St. Ste. 500, Indpls., IN APPELLEES.	:	LOWER COURT DOCKET NO. IP901531C

****

SUMMARY OF ARGUMENT

THE LOWER COURT ABUSED ITS DISCRETION BY COMPELLING PLAINTIFF TO POST A $10,000. BOND IN ORDER FOR HIM TO PROSECUTE DEFENDANTS FOR THE CIVIL WRONGS THEY PERPETRATED AGAINST HIM.

Clearly, the absolute discretion of the Lower Court should have directed it to grant a motion in this action in the light most favorable to appellant. On August 20, 1990, appellees moved the Lower Court to impose a

$10,000 Bond on plaintiff as a cruel means of thwarting his prosecutorial efforts in this controversy. This, since appellant already had the expensive burden of prosecuting this action in the State of Indiana in which he does not reside; and, this, since appellant was, in fact the party attacked by appellees.

By virtue of the Lower Court having granted appellees' motion to impose a burdensom 10,000.00 bond upon appellant, it in fact, punished appellant and forced him out of Court - this, because the financial burden was more than he could endure. Clearly, the imposition of the $10,000. Bond served as a means of punishing appellant for bringing appellees into Court to answer to alleged Civil Wrongs perpetrated against him in the first place. The $10,000. bond sent a clear, farewell message to plaintiffs as follows: "Regardless of how much you've been wronged by

a defendant who resides in a different State, don't file suit against him unless you're prepared to post a $10,000.00 Bond.

STATEMENT OF THE CASE

This negligence case arises out of appellees' (Appellee, Ruth E. Myer, Esq.) having published a letter as a favor to a friend (Joyce Christmas) which threatened appellant if he used the name "Miss Black America" in the State of Indiana. Appellees did not serve the letter upon appellant, but, instead gave it to Joyce Christmas as a favor, for her to serve whoever she wished. Service of the letter was not limited to plaintiff but also to his most advantageous business associate in Indianapolis, Indiana, (The Black Expo) threatening to drag both of them into Court if they used plaintiff's registered name (The Miss Black America Pageant & Television

Special) in the City of Indianapolis, Indiana; (1)

In addition, appellee, Ruth E. Myers, Esq. made statements to the press, threatening plaintiff if he continued to do business using his own MBA Pageant service mark.

The letter was delivered to all local newspapers and was distributed to all Indianapolis. Indiana TV Stations which caused the letter to be read on several stations in Indianapolis and reprinted in the Indianapolis, Recorder.

The letter was served upon the first Christian Baptist church where services were

1. As a result of Joyce Christmas having infringed Appellant's Miss Black America Service Mark by incorporating the name Miss black America in Indiana, appellant sued her in the U. S. District Court for the Eastern District of Pennsylvania along with an original suit against Appellees. This,

being conducted in association with appellant's Miss Black America Pageant whereupon pictures of the members were taken and the libelous legal letter was served on Rev. Damon Roach, pastor of the church while his picture was taken.

On August 20, 1990, Appellees filed a motion requesting plaintiff to post an original bond for costs and on May 26th, 1992, the Lower Court granted the motion.

A R G U M E N T

The $10,000.00 Plaintiff's Bond imposed a monstrous, and unusual financial burden upon appellant which made it difficult

---

resulting in a judgment having been rendered against Joyce Christmas for infringement in the Eastern District of Pennsylvania.

Appellant's suit against appellees in the Eastern District of Pennsylvania was dismissed for lack of jurisdiction and appellant later filed the same suit in the Southern District of Indiana.

if not impossible for him to prosecute appellees for the tortious civil wrongs they committed against him.

The purpose of such a bond is to limit a plaintiff's access to a Court of law. No just and equitable purpose will be served by this Honorable Court of law by the establishment of a precedent which will limit justice to those who can post a financially exhausting bond.

The filing of the motion by appellee to cause the Court to impose the $10,000.00 Plaintiff's Bond was designed to present such a punitive burden upon appellant that it would be impossible for him to continue his litigation against them for the tortious civil wrongs they had committed against him.

As a specific result of the civil wrongs perpetrated against plaintiff, by defendants, he has lost money to the point where he could not afford to post a bond as a means of prosecuting appellees. It is the fault of appellees that appellant is without funds, so why should appellant be the one who should be compelled to post a $10,000.00 Bond.

It can be clearly seen that the specific purpose behind defendants moving the Lower Court to impose a $10,000. bond upon plaintiff was to place a financial deterrent in front of plaintiff to thwart his efforts in prosecuting them for their tortious civil wrongs against him.

The imposition of a $10,000.00 plaintiff's bond by the Lower Court can only be seen as a situation wherein the Lower Court did in fact team up with appellees, who in

fact are officers of that Court and impose a bond upon plaintiff to kick him out of Court - which it did.

The District Court in ruling on appellee's motion to dismiss, found that appellant did have a cause with merit, and it denied appellees' motion for a Summary Judgment - which in itself was reason not to impose the $10,000.00 Bond on appellant. The fact is that the Lower Court found no meritorious means of dismissing appellant's cause, so it imposed a 10,000.00 plaintiff's bond which in fact served the same purpose.

This precedent clearly serves notice to all litigants who are poor, who are small businessmen and who are without means: "Stay out of Court!"

This practice of charging litigants

to go into Court by means of a Plaintiff's Bond sets a dangerous precedent in America. It only serves to make justice lop-sided.

Undoubtedly, an Interstate Litigant will find it difficult to find a lawyer to take a case on a contingency basis, if he has to post a $10,000.00 Bond to represent the plaintiff in Court.

Appellees' argued in their motion that since appellant is not a property owner in Indiana, he should not be allowed to sue an Indiana Resident without posting a $10,000.00 Cost Bond. When appellees were asked by the Magistrate to support their contentions with case law, they were unable to do so.

CONCLUSION

For the forgoing reasons, appellant, pro se, J. Morris Anderson respectfully request that this Honorable Court of Law reverse and remand this action with a specific

instructions to the lower Court to allow appellant to proceed with the aforesaid action without the posting of a $10,000.00 Cost Bond.

J. Morris Anderson
Plaintiff, pro se
P. O. Box 25668
Phila. PA 19144
(215) 844-8872

Supreme Court, U.S.
FILED
JAN 13 1994
OFFICE OF THE CLERK

(2)

No. 93-937

In The

SUPREME COURT OF THE UNITED STATES

October Term 1993

J. MORRIS ANDERSON,

Petitioner,

v.

STEERS, SULLIVAN, MCNAMAR & ROGERS and RUTH E. MYER, Individually,

Respondents.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For the Seventh Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION

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Attorney for Respondents

BEST AVAILABLE COPY

COUNTER STATEMENT OF THE QUESTIONS PRESENTED

Whether the Court of Appeals for the Seventh Circuit erred in affirming the district court's requirement that Petitioner post a bond to secure the payment of costs where the litigation appeared frivolous, Plaintiff was unrepresented, Plaintiff failed to establish that he had the wherewithal to pay costs should he lose on the merits and, in fact would pay, or that the bond was an unreasonable estimate of the costs likely in a lawsuit of that nature, especially when no issue was preserved for appeal.

Whether the Court of Appeals for the Seventh Circuit erred in imposing sanctions against Petitioner for a frivolous appeal when the Petitioner argued that the district court "teamed up" with the Respondents to deny Petitioner his day in Court and made no effort to show that he could not post a bond, that a case of this sort was unlikely to produce taxable costs of $10,000 or more, or that federal courts lack inherent authority to require bonds to secure contingent claims for costs, and the Petitioner had not preserved any issue for appeal.

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No. 93-937

In The

SUPREME COURT OF THE UNITED STATES

October Term 1993

J. MORRIS ANDERSON,

Petitioner,

v.

STEERS, SULLIVAN, MCNAMAR & ROGERS and RUTH E. MYER, Individually,

Respondents.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For the Seventh Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION

Respondents, Steers, Sullivan, McNamar & Rogers and Ruth E. Myer, respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the opinion of the Seventh Circuit imposing damages against Appellant for a frivolous appeal and affirming the dismissal of the case by the District Court for failure of Plaintiff to comply with the District Court's orders.

COUNTER STATEMENT OF THE CASE

Clarification of Facts in Petitioner's Statement

Pursuant to Sup. Ct. R. 15.1, this response clarifies erroneous statements of fact contained in the Petition.

Petitioner has represented that the allegations of his Complaint are factually correct. Most of these allegations have been denied by Respondents' Answer. Contrary to Petitioner's allegations in his statement of the case, no motion for summary judgment was ever presented to the district court, nor did that court grant or deny on its own motion any partial summary judgment.

This action was brought by Petitioner in the United States District Court for the Southern District of Indiana, Indianapolis Division, by the filing of a 26 page Complaint in five (5) counts on June 29, 1990. The Complaint attempted to allege trademark infringement (Count I), interference with business and contractual relations (Count II), interference with business and contractual relations (Count III), negligence (Count IV) and misuse of legal procedure (Count V), Complaint, Petitioner's Appendix L at 36.

On August 20, 1990, Defendants filed their "Motion to Dismiss and to Strike Plaintiff's Complaint", which Motion was granted in part and denied in part on December 6, 1990, by the magistrate judge. Thereafter, the magistrate judge issued his "Amended Dismissal of Counts I and V of Plaintiff's Complaint" on December 10, 1990.

Also on August 20, 1990, when Respondents filed their "Motion to Dismiss and to Strike", Respondents filed

"Defendants' Motion Requesting Plaintiff to Post an Original Bond for Costs," alleging that Petitioner was a resident of the State of Pennsylvania and did not possess title to any real estate in the state of Indiana, and that Respondents previously had incurred expenses and attorneys fees in dismissing for lack of jurisdiction a previous action regarding the same allegations filed by the same Petitioner in the United States District Court for the Eastern District of Pennsylvania, and that they believed Petitioner's action in the Southern District of Indiana was frivolous. Motion, Respondents' Appendix at App. 1. Following a pre-trial conference which addressed the issue, on May 26, 1992, the magistrate judge entered his Order requiring Petitioner to post a bond for costs or additional security for costs in the sum of $10,000. Order on Defendants' Motion Requesting Plaintiff to Post and Original Bond for Costs, Respondents' Appendix at App. 3. (The copy of the Order contained in Petitioner's Appendix C is erroneous).

Plaintiff did not post any bond, take any action, or file any Motion to Reconsider that Order. Therefore, on June 30, 1992, Respondents filed their "Motion to Dismiss". On July 10, 1992, Petitioner filed a response to the Motion to Dismiss and a Memorandum. On July 16, 1992, the Court dismissed the cause with the following language:

> The Defendants observe that while the Magistrate Judge's Order to post bond did not specify a time within which the Plaintiff was to comply, "a reasonable time to comply would be thirty (30) days, which time has now passed." Motion to Dismiss, p. 1. The Court agrees, and concludes that this cause should be DISMISSED. This cause will be reopened if the Plaintiff files a bond for costs or additional

> security for costs in the sum of $10,000 within ten (10) days from the date of his receipt of this Order.
>
> IT IS SO ORDERED this 16th day of July, 1992.

Order Dismissing Cause, Petitioner's Appendix O at 92. Thereafter, on July 24, 1992, Plaintiff filed his "Objection and Motion to Reconsider the Ruling of July 16, 1992." Plaintiff's Objection and Motion to Reconsider the Court's Ruling of July 16, 1992, Petitioner's Appendix N at 82.

On August 3, 1992, Respondents filed their Response to Plaintiff's Objection and Motion to Reconsider the Court's Ruling of July 16, 1992. Following the death of Judge Noland, the cause was reassigned to Judge Tinder who entered his Order denying Plaintiff's Motion to Reconsider on October 9, 1992. In denying Plaintiff's Motion to Reconsider the dismissal, Judge Tinder found:

> Plaintiff's only argument is that posting such a bond would be onerous and that the amount is excessive. Neither of these arguments were timely raised and the time for raising same has long expired. Plaintiff has failed to show why such bond would be onerous or the amount excessive. Costs in actions such as this often exceed fifteen thousand to twenty thousand dollars and the amount set was carefully considered in light of the nature and status of the case.

Entry, Petitioner's Appendix P at 93.

Petitioner then filed an appeal with the United States Court of Appeals for the Seventh Circuit. In his Appellant's Brief, rather than cite any authority for his case, Petitioner accused the district court and the Defendants' counsel of conspiring to dismiss his case which he claimed to be meritorious. Appellant's Brief, Petitioner's Appendix Q at 108-109.

REASONS WHY THE PETITION SHOULD BE DENIED

The Petition presents no conflict with any decision of the United States court of appeals for any other circuit, no special or important questions and no departure from the accepted and usual course of judicial proceeding nor sanction of such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

A. Petitioner has waived any issue with regard to the amount or necessity for a bond or other security for costs.

The magistrate judge entered his order requiring Petitioner to post a $10,000 bond on May 26, 1992. Petitioner did not request reconsideration of that order, but chose to ignore the same until Respondents moved the district court for an order of dismissal. Even after the district judge dismissed the cause with leave for automatic reinstatement upon posting of the bond, Plaintiff did not comply with the court's order. Rule 72(a), Fed. R. Civ. P., provides in pertinent part as follows:

> Within ten (10) days after being served with a copy of the magistrate's order, a party may

> serve and file objections to the order; a party may not thereafter assign as error a defect in the magistrate's order to which objection was not timely made.

Although this Court has not had occasion to review this rule, courts of appeal which have addressed the issue have uniformly held that a party's failure to make objections within ten (10) days after being served with the magistrate's order is a waiver of the issue. *McKeever v. Block*, 932 F.2d 795 (9th Cir. 1991); *Singletary v. B.R.X., Inc.*, 834 F.2d 1025 (5th Cir. 1987); *Abeshouse v. Ultragraphics, Inc.*, 754 F.2d 467 (2nd Cir. 1985). Petitioner's failure to object to the magistrate judge's order and seek reconsideration by the district judge was a waiver of his claims that the amount of the bond was excessive, and that he should not be required to post any bond or other security for costs.

Petitioner also urges that the imposition of a bond requirement amounts to a denial to him of equal protection as guaranteed by the Fourteenth Amendment. Petition at 32. This argument has never been presented to either the district court or to the Seventh Circuit, but is first raised in his Petition. This issue should be considered as waived. *Youakim v. Miller*, 425 U.S. 231 (1976).

For the foregoing reasons, Petitioner has failed to preserve any issue regarding the requirement for a bond or other security for costs.

B. The decision of the Seventh Circuit correctly held that the district court had inherent power to take reasonable measures to insure that the costs assessed in the case would be paid.

While Respondents have difficulty in following the arguments of Petitioner, the thrust of his presentation appears to be that the opinion of the Seventh Circuit conflicts with *Farmer v. Arabian American Oil Co.*, 285 F.2d 720 (2nd Cir. 1960) and *Aggarwal v. Ponce School of Medicine*, 745 F.2d 723 (1st Cir. 1984). Petitioner also attempts to distinguish cases relied upon by the Seventh Circuit, namely: *Ehm v. Amtrak Board of Directors*, 780 F.2d 516 (5th Cir. 1986); *A & M Gregos, Inc. v. Robertory*, 70 F.R.D. 321 (E.D. Pa. 1976); and *State Wide Enterprises, Inc. v. United States Gypsum Co.*, 238 F.Supp. 604 (E.D. Mich. 1965).

1. There is no conflict among the circuits on the inherent power of a district court to require a party who is not indigent to post a bond or give other security for costs.

Although the district court's requirement for a bond in *Farmer v. Arabian American Oil Co.*, 285 F.2d 720 (2nd Cir. 1960) was reversed, the circuit court noted that the bond was not sought until four years after the action was brought and after a previous appeal to that circuit court revealed a *prima facia* case for the plaintiff. *Id.* at 721 - 722. Further, the plaintiff had showed conclusively that he could not provide the collateral required by security companies before furnishing the bond. *Id.* at 722. In doing so, the Second Circuit distinguished its prior decision of *Miller v. Town of Suffield*, 249 F.2d 16 (2nd Cir. 1957), cert. den., 356 U.S. 978 (1958), which affirmed dismissal of an action brought by a

persistent suitor without valid claim upon non-compliance with an order for a "moderate bond for costs", which was "justified in view of the background of prior litigation". *Id.* at 721. Thus, the *Farmer* case presents no conflicts as to the inherent power of the district court.

Although no federal statute specifically authorizes a district court to require a bond or other security for costs, 28 U.S.C. §1915(a) does provide that payment of costs or fees or a bond to secure the same may not be required where the party makes an affidavit that "he is unable to pay such costs *or give security* therefor" (emphasis added). By implication, the district court may require such a bond when no such affidavit is made.

2. There is no conflict among the circuits on the facts presented in this case which justified the imposition of a bond requirement on Petitioner.

The *Farmer* case presents no conflict with this case on the facts which it addressed. Although the district court in the case at bar overruled Respondents' Motion to Dismiss pursuant to Fed. R. Civ. P. Rule 12(b)(6) as to Counts II, III and IV because Petitioner's "confusing" Complaint stated causes of action as to interference with business and contractual relationships and negligence, the Seventh Circuit found the character of Petitioner's litigation to be "apparently frivolous". Opinion, Petitioner's Appendix A at 3. Further, Plaintiff has never made an affidavit that he could not post bond or that he was indigent and entitled to proceed without the payment of *costs* or giving security therefor pursuant to 28 U.S.C. §1915(a). See also, 28 U.S.C. §1914, which allows the district court to require the prepayment of *fees*.

Petitioner's reliance on *Aggarwal v. Ponce School of Medicine*, 745 F.2d 723 (1st Cir. 1984), is also misplaced. In that case, the court ruled that even in the absence of a local rule, the district court has inherent power to require security for costs when required by the circumstances of the case. *Id.* at 726. Unlike the Petitioner in the instant case, Aggarwal had filed an affidavit with the district court representing that his only income was a monthly gratuity of $200 from relatives, he had been unable to find gainful employment although he had continued to search for the same, and had only a checking account balance of $350. Ponce School of Medicine did not controvert the affidavit. Additionally Aggarwal had no history of fruitless litigation nor track record of harassment. *Id.* at 728. Accordingly, the court of appeals remanded the case to the district court to reexamine the appropriateness of a cost bond in the case. No conflict exists between the *Aggarwal* decision and the decision of the Seventh Circuit in this case. As noted by the district judge in reviewing Plaintiff's Motion to Reconsider the Order of Dismissal,

> Plaintiff has failed to show why such bond would be onerous or the amount excessive. Costs in actions such as this often exceed fifteen to twenty thousand dollars and the amount set was carefully considered in light of the nature and status of the case.

Entry, Petitioner's Appendix P at 94.

Petitioner has also alleged that the decision of the Seventh Circuit is not supported by the following cases: *Ehm v. Amtrak Board of Directors*, 780 F.2d 516 (5th Cir. 1986); *A & M Gregos, Inc. v. Robertory*, 70 F.R.D. 321 (E.D. Pa. 1976); and *State Wide Enterprises, Inc. v. United States*

Gypsum Co., 328 F.Supp. 604 (E.D. Mich. 1965). Petitioner's argument appears to be that because those cases involved a determination by the court that either those plaintiffs' actions involved a good chance that the defendants would ultimately prove bad faith (*A & M Gregos*) or the plaintiff's case lacked merit (*Ehm* and *State Wide Enterprises*), and prior unsuccessful litigation (*Ehm*), they are somehow inapposite to the case at bar. However, the district court's ruling in this case that Petitioner's Complaint stated a claim upon which relief could be granted is not tantamount to a finding that the case had merit and was not being pursued in bad faith. Rather, the Court of Appeals characterized the litigation by Petitioner as "apparently frivolous." Thus the district court was ruling upon the mere basics of pleading, while the court of appeals was looking at the probability of recovery on those allegations. Certainly the decision of the Seventh Circuit in the case at bar is consistent with *Ehm*, *A & M Gregos* and *State Wide Enterprises*.

Petitioner next seems to argue that because parts of his Complaint were dismissed for failure to state a claim, little in the way of cost would be incurred, thus justifying a lower bond. Petition at 15. The bond was not established until after two Counts of Plaintiff's Complaint had been dismissed, and the District Judge specifically found that costs in cases of this nature often exceeded fifteen to twenty thousand dollars. Entry, Petitioner's Appendix P at 94. Petitioner has never shown either the district court or the court of appeals that costs would not be high. In fact, a review of the Plaintiff's Complaint, the Petitioner's Brief in the court of appeals and the Petition before this Court clearly indicates how disjointed Petitioner's arguments are and how difficult they are to follow, let alone understand. Petitioner's efforts seem calculated to require more time, effort and expense to

decipher and refute, rather than less. Neither the district court nor the court of appeals erred in this respect.

For the foregoing reasons, Petitioner has failed to show any grounds for issuing a Writ of Certiorari to the Seventh Circuit with regard to the issue of the cost bond.

C. There is no conflict between the circuits regarding the Petitioner's frivolous appeal to the Seventh Circuit which warrants granting the Petition.

Petitioner next urges that the decision by the Seventh Circuit conflicts with another Seventh Circuit decision, namely *Bacon v. American Federal of State, County & Municipal Employees Council*, 795 F.2d 33 (7th Cir. 1986) because the dissenting opinion in that case indicated that one judge was unable to conclude that that appeal was brought in bad faith rather than brought ineptly. Plaintiff's reliance upon a dissenting opinion in the same circuit does not constitute grounds for the granting of certiorari pursuant to Sup. Ct. R. 10.1.

Plaintiff has urged that his appeal could not be frivolous because the district judge did not find that his case-in-chief was frivolous. Petition at 19. To be sure, Petitioner is *pro se*. The Seventh Circuit made allowance in that respect for Petitioner, however. Opinion, Petitioner's Appendix A at 4. The case before the Seventh Circuit was a classic example of the reason for imposing sanctions for a specious appeal. Because Petitioner did not seek reconsideration of the Magistrate Judge's Order requiring a bond of $10,000, no issue was preserved for appeal. Fed. R. Civ. P. 72(a). Petitioner failed to comply with the Rules of the Seventh Circuit and the Federal Rules of Appellate Procedure. Petitioner's Brief before that court cited no authority and no

cogent argument. As noted by the Seventh Circuit in its opinion, the Petitioner made no effort to show that he could not post the bond, that the case was unlikely to produce taxable costs of $10,000 or more, or that Federal Courts lack inherent authority to require bonds to secure a contingent claim for costs. Opinion, Petitioner's Appendix A at 4. No valid purpose was furthered by the prosecution of Petitioner's appeal.

Petitioner now urges that the decision of the Seventh Circuit conflicts with the decision of the Fifth Circuit in *Ehm v. Amtrak Board of Directors*, 780 F.2d 516 (5th Cir. 1986). See Petition at 8 - 12. It appears to be Petitioner's argument that because the issue in *Ehm* was a novel one for the Fifth Circuit, he is being treated unfairly when the Seventh Circuit, also finding that Petitioner's issue was novel for that circuit, imposed sanctions. It is respectfully submitted that there is no conflict because of grace granted by the Fifth Circuit to an appellant who apparently made a sufficient legal argument, although the Court cautioned that "even judicial patience is not inexhaustible." *Id.* at 518.

Petitioner urges that the Seventh Circuit erroneously relied on *McNeil v. United States*, 261 U.S.L.W. 4468 (May 17, 1993), but does not indicate why this Court's statement that the Court has "never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel" does not apply to his case. Petitioner merely asserts, "In the case at bar, plaintiff/petitioner, *pro se* did not make any fatal mistakes period." Petition at 20.

Petitioner next urges that the imposition of sanctions for a frivolous appeal violates the spirit of the "cruel and unusual punishment clause of the Eighth Amendment to the

Constitution" because he appeared *pro se*. Petition at 21-24. However, the protection of the Eight Amendment against cruel and unusual punishments is not applicable to purely civil penalties. *Zwick v. Freeman*, 373 F.2d 110 (2nd Cir. 1967) cert. den., 389 U.S. 835. In any event, the sanction serves a valid public purpose similar to that of a sanction for violation of Fed. R. Civ. P. 11.

Petitioner next urges that he was unable to acquire a lawyer to represent him because of the cost involved. He does not attempt to show how his decision to proceed *pro se* excuses his conduct. As previously indicated, his choice to proceed without the benefit of counsel does not exempt him from compliance with the rules of civil procedure. *McNeil*, *supra*.

Petitioner next urges that the district court and the Seventh Circuit were both in error in finding that Petitioner did not show he could not afford to post a bond. Petition at 25-29. Other than argumentative above and self-serving conclusions, Petitioner has not established facts to show he could not post a bond as did the plaintiff in *Aggarwal v. Ponce School of Medicine*, *supra*.

Petitioner next makes a vague reference to denial of equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution, citing *Coady v. Aguadillia Terminal, Inc.*, 456 F.2d 677 (1st Cir. 1972). Petition at 32. Petitioner does not explain how that constitutional provision applies to his case. Accordingly, such arguments should be deemed waived. See *Gulf, Mobile and Ohio Railroad Co. v. Thornton*, 294 F.2d 104, 108 (8th Cir. 1961).

The Petitioner's next assertion that "the Seventh Circuit stated two reasons the Petitioner should have been required to

post a $10,000 bond: (i) frivolous character of the litigation; and (ii) the fact that Petitioner was unrepresented," (citation omitted), Petition at 32, mis-states the court's opinion. The court did not base its decision solely on the frivolous character of the litigation and the fact that he was unrepresented. The Court ruled that those issues made the Respondents' Motion for the requirement of a bond a plausible one. However, the court went on to say:

> And the Plaintiff failed to establish to the reasonable satisfaction of the district court either that he has the wherewithal to pay costs should he lose on the merits and that in fact he would pay, or that $10,000 is an unreasonable estimate of the costs likely in a lawsuit of this character.

Opinion, Petitioner's Appendix A at 3.

Finally, Petitioner urges that the law of equity should somehow protect him, even if he did not make the most eloquent pleading of his case. He continues to assert that he must have done everything required because neither the district court nor the Seventh Circuit pointed out any violation of procedural rule. Petition at 36. Before the district court and before the Seventh Circuit, Petitioner made no effort to cite any authority in support of his position, but spewed words across the page with great fury. He failed to present to the district court or to the Seventh Circuit any cogent argument. Petitioner did libel the district court, however, by alleging that the district court "did in fact team up with Appellees, who are officers of that Court and impose a bond upon Plaintiff to kick him out of Court -- which it did." Petitioner further alleged in his Brief before the Seventh Circuit that because the district court had no meritorious means of dismissing his cause, it

imposed a $10,000 bond to serve the same purpose. See Brief of Appellant, Petitioner's Appendix Q at 108-109.

For the foregoing reasons, Petitioner has failed to show any grounds for issuing a Writ of Certiorari to the Seventh Circuit regarding the issue of sanctions imposed against him for a frivolous appeal.

CONCLUSION

The Seventh Circuit correctly affirmed the district court's requirement that Petitioner post a bond to secure the payment of costs and properly imposed sanctions against Petitioner for a frivolous appeal. Accordingly, the Petition for Writ of Certiorari should be denied.

Date: January 13, 1994

Respectfully submitted,

Michael R. Franceschini

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

CIVIL ACTION NO.: IP901531C

J. MORRIS ANDERSON,

Plaintiff,

v.

STEERS, SULLIVAN, MCNAMAR & ROGERS,
and RUTH E. MYER,

Defendants.

DEFENDANTS' MOTION REQUESTING PLAINTIFF TO POST AN ORIGINAL BOND FOR COSTS

COME NOW Defendants, by counsel, under Rules 3 and 4 of the Rules of the United States District Court of the Southern District of Indiana, and move the court to order Plaintiff to file a bond for costs or additional security for costs in the sum of $10,000.00 or in such an amount and so conditioned as it may designate. Defendants request filing of such a bond for the following reasons:

1. Plaintiff is a resident of Philadelphia, Pennsylvania and does not possess title to any real estate in the State of Indiana.

2. Defendants previously incurred expenses and attorneys fees in dismissing for want of jurisdiction a previous action regarding the same allegations filed by the same Plaintiff in the United States District Court for the Eastern District of Pennsylvania.

3. Without the posing [sic] of said bond, Defendants will unlikely be able to recover expenses and attorneys fees in this cause of action which Defendants believe to be frivolous and without merit in fact or law.

Respectfully submitted,

/s/ Michael R. Franceschini

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

CIVIL ACTION NO.: IP901531C

J. MORRIS ANDERSON,

Plaintiff,

v.

STEERS, SULLIVAN, MCNAMAR & ROGERS, and RUTH E. MYER,

Defendants.

ORDER ON DEFENDANTS' MOTION REQUESTING PLAINTIFF TO POST AN ORIGINAL BOND FOR COSTS

COME NOW Defendants, by counsel, and having filed their Motion Reuqesting [sic] Plaintiff to Post and [sic] Original Bond for Costs, said Motion being in the following words and figures, to-wit:

(H.I.)

The Court being duly advised finds that the same should be granted.

IT IS THEREFORE ORDERED that Plaintiff, J. Morris Anderson, is ordered by this Court to file a bond for costs or additional security for costs in the sum of $10,000.00.

May 26, 1992
Date

/s/ J. Patrick Endsley
Magistrate Judge, United States District Court for the Southern District of Indiana